24877 No. 665

IN THE

United States Court of Appeals

For the Second Circuit

No. 24874

A. H. BULL STEAMSHIP CO.,
Plaintiff-Appellee,

against

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO,
Defendants-Appellants.

APPENDIX OF DEFENDANTS-APPELLANTS

UNITED STATES COURT OF APPEALS FILED

LEE PRESSMAN,
MARVIN SCHWARTZ,
Attorneys for Defendants-Appellants.

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United States District Court

For the Eastern District of New York

A. H. Bull Steamship Co.,

vs.

National Marine Engineers' Beneficial Association, AFL-CIO and International Organization of Masters, Mates and Pilots, Inc., A.F.L. C.I.O.

Docket Entries

(A and B of Record Entries)

Date	*Filings—Proceedings*
1957	
Oct. 7	—Complaint Filed. Summons Issued.
Oct. 8	—Summons Rec'd & Filed. Defts Served.
Oct. 8	—By Zavatt J. Order to Show Cause Filed with Proof of Service for Injunction etc. 10-9-57
Oct. 9	—Before Zavatt J. Motion for injunction, respectfully referred to Judge Bruchhausen
Oct. 9	—Bruchhausen J. Hearing on Order to show cause for Injunction. Hear- Held—Decision Reserved all papers by Oct. 11-57 at 4 P. M.
Oct. 11	—Affidavit of Lee Pressman Filed
Oct. 11	—Affidavit of Charles T. Atkins Filed
Oct. 11	—Affidavit of George C. Kinney Filed
Oct. 17	—Two cross motions to dismiss filed
Oct. 17	—Affidavit of Lee Pressman filed
Oct. 17	—Affidavit of Herbert L. Daggett filed
Oct. 17	—Affidavit of Marvin Schwartz filed
Oct. 17	—Affidavit of Charles T. Atkins filed
Oct. 17	—Suppl. Affidavit of James V. Hayes filed
Oct. 17	—By Bruchhausen J. Decision rendered on motion for injunction—Pltff's motion is granted. Deft's. cross motions are denied—Settle order on 2 days notice etc. (Opinion on file)
Oct. 21	—By Bruchhausen J. Order Granting Preliminary Injunction Filed
Oct. 21	—Bond on Injunction Filed
Oct. 21	—Notice of Appeal Filed—(Deposit of $250.00 made into Registry of Court)
Oct. 23	—By Bruchhausen J. Order Filed Re Preference of Case.
Oct. 23	—Bond on Appeal Filed
Oct. 23	—Record on Appeal with 3 Copies of Index handed to Lawrence Drasin to be forwarded to U. S. C. of A.

Complaint

(Record, pp. 1-7)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff, by its attorneys, alleges, upon information and belief, as follows:

1. Plaintiff, a corporation duly organized and existing by virtue of the laws of the State of Delaware with its principal offices at 115 Broad Street, New York City, New York, is, and for many years has been, engaged in interstate and foreign commerce, being a common carrier by sea operating American-flag, dry cargo and other vessels in foreign and coastwise trade.

2. (a) Defendant National Marine Engineers' Beneficial Association, AFL-CIO (hereinafter referred to as "MEBA") and defendant International Organization of Masters, Mates and Pilots, Inc., AFL-CIO (hereinafter referred to as "MMP") are labor organizations which represent employees in the shipping industry, an industry affecting commerce as defined in the Labor Management Relations Act of 1947.

(b) MEBA does business as such through duly authorized officers and agents within the State, City, and Eastern District of New York, with its principal place of business at 132 Third Street, S.E., Washington, D.C. and with various local offices in New York City.

(c) MMP does business, as such, through its duly authorized officers and agents within the State, City, and

Eastern District of New York, with its principal place of business at 105 Washington Street, New York, N. Y.

3. Jurisdiction of this Court over this action derives from, and is based upon—

(a) the Labor Management Relations Act of 1947, Title III, § 301, 61 Stat. 156 (29 U. S. C. § 185); and/or

(b) by reason of the allegations of paragraphs 1 and 2 and because the amount in controversy herein exceeds the sum of Three Thousand ($3,000) Dollars exclusive of interest and costs, the Judicial Code Title 28, U. S. C. § 1332(a).

4. Plaintiff and defendant MEBA executed a written collective bargaining agreement on June 18, 1955, which was, by its terms, to continue in effect until June 15, 1958 and was to cover the employment relations of licensed engineering officers aboard plaintiff's vessels.

Plaintiff and defendant MMP executed a written collective bargaining agreement on July 1, 1955, effective as of June 16, 1955, which by its terms, was to continue in effect until September 30, 1958 and was to cover the employment relations of licensed deck officers (excluding masters) aboard plaintiff's vessels.

Both of these agreements are presently, and at all times material hereto have been, in full force and effect between the respective parties.

5. Section 2 of the agreement between plaintiff and MEBA provides in part as follows:

"There shall be no strikes, lockouts or stoppages of work during the period of this agreement."

6. Section 3 of the agreement between plaintiff and MMP provides in part as follows:

> "There shall be no strikes, lockouts or stoppages of work during the period of this Agreement."

and further:

> "It is understood that in the event a picket line is established against any vessel, the licensed Deck Officers of such vessel will report and perform all of their normal duties incidental to the security of the vessel, passengers and cargo, provided that no Licensed Deck Officer shall be required to work under conditions which may endanger his health or safety. The Organization undertakes to use its best efforts to obtain clearance for such purpose from the Union establishing the picket line."

7. Each defendant is also obligated under its respective collective bargaining agreement to furnish plaintiff on call with such competent and fit licensed officers to serve aboard plaintiff's vessels as plaintiff may require.

8. Commencing on or about August 19, 1956, Seafarers' International Union of North America, Altantic and Gulf District, AFL-CIO (hereinafter referred to as "SIU"), which, in turn, had contractually represented plaintiff's unlicensed merchant seamen for purposes of collective bargaining, caused various vessels owned and operated by plaintiff to be picketed at plaintiff's Brooklyn Terminal in the Port of New York resulting in a total work stoppage by all unlicensed seamen aboard said vessels. Said picketing and the resulting work stoppage by SIU and its adherents constituted an unlawful strike in violation of SIU's existing collective bargaining agreement with plaintiff.

9. Defendant MMP, despite notice of the illegal nature of SIU's strike, on or about August 19, 1957, acting through its officers, agents, employees, and members, ordered, induced and caused its members to respect the SIU picket lines and to cease all work aboard said vessels in violation of its collective bargaining agreement with plaintiff as aforesaid.

Thereafter, and in further violation of said collective bargaining agreement, defendant MMP declared its members to be on strike against plaintiff.

10. Defendant MEBA, acting through its officers, agents, employees and members, also caused its members to cease all work aboard plaintiff's aforementioned vessels by such members and subsequently declared its members to be on strike against plaintiff, all in violation of its existing collective bargaining agreement with plaintiff as aforesaid.

11. Said work stoppages by defendants MEBA and MMP have resulted in preventing four of plaintiff's ships from departing from New York on August 22, 1957, as originally scheduled, and thereafter.

12. On or about September 11, 1957, when SIU caused various of plaintiff's vessels to be picketed at the Port of San Juan, Puerto Rico. resulting in further work stoppages by its members, defendants MEBA and MMP acting through their officers, agents, employees, and members, thereupon caused their members to stop all work on said vessels in further violation of their respective collective bargaining agreements. As a result thereof, plaintiff's vessels have been prevented from departing from said port.

13. Defendants' officers and members have repeatedly threatened to cause and, unless restrained, will cause addi-

tional work stoppages aboard plaintiff's vessels at other ports of call.

14. In addition to striking and refusing to furnish licensed engineering officers for plaintiff's vessels at New York and San Juan, MEBA, acting through its agents, has refused to furnish licensed engineering officers (such officers being at all times ready, willing and able to serve aboard plaintiff's vessels) to plaintiff for certain of its vessels at the Ports of Baltimore and Norfolk and has thereby prevented or delayed such vessels from sailing as scheduled.

15. The aforementioned refusals to furnish officers and work stoppages are in violation of said written collective bargaining agreements and, in particular of Sections 1 and 2 of the agreement with MEBA, and Sections 2(h), 2(m) and 3 of the agreement with MMP. Plaintiff has at all times past performed, and is continuing to perform, all the terms and conditions of its respective collective bargaining agreement with each defendant.

16. The work stoppages caused by defendants aboard plaintiff's vessels have caused and are causing plaintiff serious loss, damage, and irreparable injury for which plaintiff has no adequate legal remedy in that plaintiff is daily losing to its competitors much valuable freight and passenger business which it may never recapture and is suffering an irreparable loss of good will among shippers, governmental agencies, prospective passengers and other segments of the public. Moreover, if said work stoppages continue, defendants' ability to respond in damages for the monetary loss caused plaintiff will be exhausted.

17. Said work stoppages have to date (i.e., October 7, 1957) caused plaintiff monetary damages on account of the six vessels strike-bound at New York and San Juan

alone aggregating not less than $360,000 over and above plaintiff's loss of profits and good will occasioned by the necessity of plaintiff's customers placing their shipments with plaintiff's competitors.

18. Such damages and loss of profits and good will are continuing and will continue each day unless defendants are compelled to abide by their respective collective bargaining agreements.

19. Because of the continuing nature of the damage plaintiff is sustaining each day it is denied the use of its vessels by defendants' unlawful work stoppages, plaintiff requests leave to amend and supplement this complaint as and when the total damage sustained can be ascertained and calculated with reasonable accuracy.

WHEREFORE, plaintiff demands judgment as follows:

(a) that the Court find and declare that defendants by picketing, striking, and refusing to work upon plaintiff's vessels are in violation of their respective collective bargaining agreements with plaintiff as amended;

(b) that the Court order defendants to perform specifically, for the duration of their respective collective bargaining agreements, their obligations to furnish qualified licensed officers and not to strike or cause work stoppages aboard plaintiff's vessels;

(c) that the Court temporarily and permanently enjoin defendants, their officers, agents, and employees and all persons acting in concert and participation with defendants, from picketing, striking, or otherwise causing any work stoppage aboard any or all of plaintiff's vessels so

long as said collective bargaining agreements shall remain in full force and effect;

(d) that the Court award plaintiff such damages as it has sustained to date and hereafter in consequence of defendants' violation of its contractual obligation together with the costs and disbursements of this action;

(e) that the Court grant plaintiff such other, further, and different relief as to the Court may appear just in the premises.

Dated: October 7, 1957.

SATTERLEE, BROWNE & CHERBONNIER,
DONOVAN, LEISURE, NEWTON & IRVINE,
By s/ JAMES V. HAYES,
A Member of the firm,
Attorneys for Plaintiff,
2 Wall Street,
New York 5, N. Y.

Order to Show Cause

(Record, pp. 9-25)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the complaint herein and the annexed affidavit of Milton Williams, it is

ORDERED, that defendants National Marine Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, show cause before this Court at a Motion Term thereof to be held in the Federal Building, Room 214, Washington and Johnson Streets, Brooklyn, New York, on the 9th day of October, 1957, at 10:00 A. M. or as soon thereafter as counsel can be heard, why an order should not be entered herein preliminarily enjoining said defendants, their officers, agents, employees, members and attorneys and all persons acting in concert and participation with them from inciting, causing or engaging in any strike or work stoppage affecting plaintiff's vessels or otherwise violating, or inducing or causing others to violate, defendants' existing collective bargaining agreements as amended with plaintiff and for such other, and different relief as the Court may deem just in the premises; and it is

FURTHER ORDERED, that service of a copy of this order together with a copy of the affidavit annexed hereto in the manner prescribed by Title III, § 301(d) of the Labor Man-

agement Relations Act of 1947, 29 U. S. C. § 185(d), on or before October 8, 1957, at 12 noon, shall be sufficient.

Dated: Brooklyn, N. Y.,
October 7th, 1957.

s/ ZAVATT,
U. S. D. J.

Affidavit of Milton Williams

(Record, p. 11)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MILTON WILLIAMS, being duly sworn, deposes and says:

I am Vice President in charge of operations of A. H. Bull & Co., Inc., a subsidiary of plaintiff, A. H. Bull Steamship Co., engaged in operating plaintiff's American-flag, ocean-going, dry cargo vessels. I have represented our steamship lines in labor negotiations since 1936 with the exception of four and one-half years from 1941 to 1946, during which time I was in the Armed Forces of the United States.

I make this affidavit in support of plaintiff's application for an order to show cause why defendants, National Marine Engineers' Beneficial Association AFL-CIO (here-

inafter referred to as "MEBA"), and International Organization of Masters, Mates and Pilots, AFL-CIO (hereafter referred to as "MMP"), should not be enjoined pendente lite from striking or otherwise violating their respective collective bargaining agreements with plaintiff.

For several decades plaintiff and its affiliated companies have engaged in the ocean transportation of freight and passengers in interstate and foreign commerce. Plaintiff currently maintains dock and terminal facilities in the Ports of New York, Philadelphia, Baltimore and San Juan, Puerto Rico. Its vessels regularly call at these and other American and foreign ports to receive and discharge cargoes and passengers.

To my present knowledge, there have been no direct collective bargaining negotiations between MEBA or MMP and plaintiff for the past seven years. During this entire time it was mutually understood and agreed between MEBA, MMP and plaintiff, that the terms of any collective bargaining agreement or any amendments thereto regarding wages or working conditions, which might be agreed to by MEBA, MMP and the member companies of the American Merchant Marine Institute (hereafter referred to as "AMMI"), would become a part of the respective agreements between MEBA and MMP and plaintiff, effective as of the same date that such changes would become effective on the vessels of the companies represented by AMMI. This mutual understanding and agreement was occasioned by the fact that plaintiff is not a member of AMMI.

There is at present a written collective bargaining agreement between MEBA and plaintiff which does not expire until June 15, 1958, and a written collective bargaining agreement between MMP and plaintiff which does not expire until September 30, 1958, which agreements each provide under respective sections denoted "Grievance Procedure and Arbitration":

> "There shall be no strikes, lockouts or stoppages of work during the period of this Agreement."

In addition, the agreement between MMP and plaintiff provides in the same section as follows:

> "It is understood that in the event a picket line is established against any vessel, the Licensed Deck Officers of such vessel will report and perform all of their normal duties incidental to the security of the vessel, passengers and cargo, provided that no Licensed Deck Officer shall be required to work under conditions which may endanger his health or safety. The Organization undertakes to use it best efforts to obtain clearance for such purpose from the Union establishing the picket line."

In addition each union is obligated under its respective collective bargaining agreement to furnish plaintiff on call and as it may, from time to time, require, competent and fit licensed officers to serve as such aboard plaintiff's vessels.

Both the collective bargaining agreement between MEBA and plaintiff, and that between MMP and plaintiff, contain a clause which permits either party to reopen the question of wages under certain stated conditions. Pursuant to this provision, MEBA, on April 11, 1957, notified the plaintiff of its desire for a review of general wages, overtime and pension rates; on April 15, 1957, MMP likewise notified plaintiff that it desired to open wage review negotiations.

On April 17, 1957, I addressed separate letters to MEBA and MMP acknowledging receipt of their requests for wage negotiations, and suggested in line with our standard practice over the years that such negotiations be deferred until they had completed similar negotiations then in progress with AMMI. I acknowledged at that time that

aintiff was prepared to apply the same wage rates and orking conditions which might be agreed upon between EBA and MMP and the AMMI retroactively, if necessary, the effectivqe date agreed upon between those parties. MEBA and MMP thereafter agreed upon a 6% wage crease with AMMI, effective June 16, 1957. Plaintiff at at time notified both unions that it was prepared to sign e same wage amendment. However, MEBA and MMP atly refused to sign with plaintiff the same agreement at they had signed with practically all members of the ry cargo shipping industry.

Pursuant to defendants' requests, I met with the repreentatives of these two unions on or about July 16, 1957. EBA was represented by Messrs. Daggett and Pressman, mong others, and MMP was represented by Messrs. Atins and Bishop. Neither union made any specific wage emands at this meeting. On the contrary, both unions inisted that they had no real dispute with plaintiff. Each nion simply claimed that their members had "a feeling of nsecurity" in plaintiff's employ because of fears that laintiff's parent corporation, American Coal Shipping, nc. (whose officers are not represented by these defendnts), might sometime in the future take over plaintiff's perations thereby removing plaintiff's vessels from the present contracts. Both unions, however, declined plainiff's offer, presented by counsel, to arbitrate any outstanding grievance.

At a subsequent meeting, again no wage or monetary demands were tendered by either union. Despite our assurance that plaintiff's management had no plans or intention of turning any ship over to American Coal, the union representation continued to express concern about job security. To counter this position—and despite the fact that job security was not a proper subject for negotiation under a wage reopener—plaintiff's counsel offered to

discuss a one-year extension of each union's present agreement coupled with a guaranty against any transfer of plaintiff's vessels to American Coal during the life of the agreements as extended. Both unions flatly rejected this suggestion and again refused arbitration.

On August 6, plaintiff telegraphed a renewal of its offer to sign with MEBA and MMP the same wage revision provision, retroactive to June 16, 1957, that both had secured from AMMI. Plaintiff further stated that, until MEBA and MMP signed such a wage revision, plaintiff would accrue the industry wage increase for payment to the members of the Unions upon signing such provision.

On August 12, 1957, I received telegrams from MEBA and MMP rejecting plaintiff's renewed offer of a 6% wage increase on the ground that the offer was unsatisfactory in that it did not meet the problem of job security which had been discussed in the negotiations, and the parties were unable to agree upon the arbitration of this issue.

Thereafter, on August 19, 1957, plaintiff's unlicensed seamen began picketing plaintiff's vessels at its Brooklyn Terminal resulting in a total stoppage of all work by the crews of these vessels; within a week four vessels were and still are strike bound in Brooklyn.

MMP on or about that date ordered its members constituting all licensed deck officers (excepting the masters) aboard said vessels to respect and support the seamen's picket lines and to cease all work being performed by them upon the strikebound vessels. Subsequently MMP informed plaintiff that its work stoppage was now in fact a strike of the members of MMP against plaintiff. Since that date, MMP has picketed plaintiff's vessels in Brooklyn.

Likewise MEBA caused its members to cease all work being performed by them on the strike-bound vessels of plaintiff and has picketed plaintiff's vessels in Brooklyn.

On or about September 11, 1957, the seamen extended their strike to San Juan, Puerto Rico, tying up two more

of plaintiff's ships and virtually closing down plaintiff's New York-to-Puerto Rico service. MEBA and MMP thereupon spread their strike to plaintiff's vessels located in the port of San Juan, Puerto Rico, thereby preventing plaintiff's vessels from departing from said port. By abandoning plaintiff's vessels in San Juan against the orders of the Masters of the vessels the officers involved subjected themselves to Coast Guard disciplinary proceedings which are currently in progress.

The officers of MEBA and MMP are now threatening further strike action at other ports visited by plaintiff's ships. In fact, in the past week defendant MEBA has refused to clear engineering officers—most, if not all, of whom have in the past sailed aboard plaintiff's vessels—to sign articles aboard Bull vessels now at Baltimore and Norfolk. These refusals by MEBA to furnish engineering officers at Baltimore and Norfolk have not been accompanied by any other strike activity and, accordingly, such vessels must be regarded as in violation of Section 1 of MEBA's agreement with plaintiff to furnish engineering officers as and when required.

The actions of MEBA and MMP in striking against plaintiff and picketing its vessels are in breach of the respective written collective bargaining agreements entered into by each union particularly since it was clearly recognized and mutually understood by all parties concerned that neither MEBA nor MMP had any right to strike during wage review negotiations. Moreover, never before has it been suggested to my knowledge that "job security" was a proper subject of negotiations during such a wage review.

On September 30, 1957, Judge Bruchhausen of this Court issued a preliminary injunction against the strike of the unlicensed seamen in an action by Bull, as plaintiff, against the Seafarers' International Union (Civ. No. 18007). This injunction, a copy of which is attached to this affidavit, specifically runs against SIU "and all persons in active concert or participation" with it.

Affidavit of Milton Williams

I am informed by counsel that copies of this order were served upon the chief officers and counsel of both MMP and MEBA. In addition I have caused copies of this order to be served upon all MMP and MEBA pickets wherever they have appeared.

Despite the language of Judge Bruchhausen's order, these Unions have refused to give up their strike and related harassing interferences with plaintiff's operations, thereby necessitating the institution of this suit and the within application for an injunction *pendente lite*.

This unlawful strike by MEBA and MMP has already caused plaintiff severe and irreparable injury through the tie up of its vessels with consequent loss of substantial freight business to its competitors. Unless this unlawful strike is promptly stopped, plaintiff will continue to suffer severe and irreparable injury for which no adequate legal remedy exists.

Plaintiff has no adequate legal remedy because the damage done to plaintiff's position in the shipping industry and its good will among its customers is incalculable in monetary terms. Upon information and belief neither of these unions is in a position to satisfy any substantial monetary judgment if entered herein.

Plaintiff asks to proceed by order to show cause because the injury presently being suffered by the continued acts and activities of the defendants herein necessitates a prompt hearing and disposition of its application for an injunction *pendente lite*.

No previous application has been made for the relief herein sought to any Court or judge thereof.

WHEREFORE, I respectfully submit that an injunction *pendente lite*, substantially in the form set forth in the order to show cause submitted herewith should issue forthwith.

MILTON WILLIAMS.

(Sworn to October 7, 1957.)

Order Granting Preliminary Injunction

Civil No. 18007

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

—o—

A. H. BULL STEAMSHIP CO.,

Plaintiff,

against

SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO,

Defendant.

—o—

Plaintiff having moved herein for an order enjoining defendant, Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO, *pendente lite* and said defendant having cross moved herein and these causes having come before the Court on September 18, 1957, and the Court having heard argument by James V. Hayes, Esq., counsel for plaintiff, and Seymour W. Miller, Esq., counsel for defendant, and received and considered the affidavits and briefs filed on behalf of the respective parties, and, after due deliberation, it appearing that the Court has jurisdiction of this action under Section 301 of the Labor Management Relations Act of 1947 (29 U. S. C., Section 185), that there is presently in existence a collective bargaining agreement between the parties hereto, which agreement, by its terms, will not expire until September 30, 1958, and that defendant has violated and is presently violating

the provisions of said collective bargaining agreement, to wit, Article I, Section 2, and Article II, Section 4 thereof, and it further appearing that, if defendant not be restrained preliminarily, plaintiff will suffer irreparable injury for which it has no adequate legal remedy, the Court having, on September 27, 1957, filed its opinion thereon, and plaintiff having filed, and the Court having approved, the undertaking as prescribed by Rule 65(c) of the Federal Rules of Civil Procedure, it is, therefore,

ORDERED that, effective on October 1, 1957, at 5 P. M., Eastern Daylight Savings Time, defendant, Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO, its officers, agents, members, servants, employees, attorneys, and all persons in active concert or participation with them, who shall or may receive actual notice of this Order, be and the same hereby are enjoined and restrained, during the pendency of this action, from picketing, striking, or inciting, causing, inducing, or, in any manner, directly or indirectly, supporting any work stoppage aboard any of the vessels owned or operated by plaintiff, A. H. Bull Steamship Co., or any of its subsidiaries, wherever any such vessels may be situate or, during the pendency of this action, may call; and it is

FURTHER ORDERED that the said defendant specifically perform its agreement to furnish the plaintiff with capable, competent, and physically fit persons when and where they are required, and of the ratings needed to fill vacancies necessitating the employment of Unlicensed Personnel, in ample time to prevent any delay in the scheduled departure of any vessel covered by said agreement, and it is

FURTHER ORDERED that defendant's cross-motion be and the same is hereby in all respects denied, and it is

Order Granting Preliminary Injunction

FURTHER ORDERED that the Court's opinion filed herein on September 27, 1957, shall constitute the findings of fact and conclusions of law as required by Rule 52(a) of the Rules of Civil Procedure.

Dated: Brooklyn, New York, September 30th, 1957.

Enter,

s/ WALTER BRUCHHAUSEN,
United States District Judge.

A True Copy

Attest

Dated: September 30, 1957.

/s/ PERCY G. B. GILKES,
Clerk.

By /s/ THOMAS B. COSTELLO,
Deputy Clerk.

(SEAL)

Cross-Motion to Dismiss Complaint

(Record, pp. 43-44)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE that the undersigned will cross-move this Court, upon the Order to Show Cause herein, for an order

(1) Dismissing the complaint for want of jurisdiction of this Federal District Court over the cause of action set forth in the complaint.

(2) Dismissing the complaint for failure to state a cause of action; or, in the alternative,

(3) For an order

(a) Dismissing that part of the action seeking an injunction on the ground that the Court does not have jurisdiction to grant the relief so requested;

(b) Dismissing that part of the action seeking a declaratory judgment on the ground that all the matters and issues involved therein are involved in and fully determinable by proceedings already pending in the Supreme Court of the State of New York, Kings County, and that, in any event, the claim herein for damages obviates the need therefor; and

(c) Staying further proceedings in this case upon the ground that there is an action pending in the Supreme Court of the State of New York, in and for the County of Kings,

between the same parties, bearing Index Number 9860-1957, for injunctive relief based on the same alleged breach of contract alleged herein, or, in the alternative,

3. For an order staying all proceedings with respect to all the issues herein on the ground of the pendency of a prior action as hereinabove set forth.

WHEREFORE, defendant National Marine Engineers' Beneficial Association requests this Court to dismiss the complaint herein, or to grant an alternate order as hereinabove prayed, and for such other, further or different relief as the Court may deem just and proper.

Dated: New York, N. Y., October 8, 1957.

Yours, etc.,

LEE PRESSMAN,
Attorney for Defendant
National Marine Engineers'
Beneficial Association,
Office & P. O. Address,
225 Broadway,
New York 7, N. Y.

To:

SATTERLEE, BROWNE & CHEREONNIER,
30 Broad Street,
New York 4, N. Y.

DONOVAN LEISURE NEWTON & IRVINE,
2 Wall Street,
New York 5, N. Y.

Cross Motion to Dismiss Complaint

(Record, p. 45)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE that upon the complaint herein, a cross motion will be made upon the return of Plaintiffs' motion for a temporary injunction herein, returnable at this Court at a Motion Term thereof to be held in the Federal Building, Room 214, Washington and Johnson Streets, Brooklyn, New York, on the 9th day of October, 1957, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order under Rule 12 of the Federal Rules of Civil Procedure, dismissing the complaint herein, with costs, on the grounds:

1. That the complaint, upon its face, does not state a claim upon which relief can be granted.

Dated: New York, New York, October 9th, 1957.

Yours, etc.,

MARVIN SCHWARTZ,
Attorney for Defendant International Organization Masters, Mates & Pilots,
Office and Post Office Address,
233 Broadway,
New York 7, New York.

To:

DONOVAN LEISURE NEWTON & IRVINE,
2 Wall Street,
New York 5, New York.

Affidavit of Herbert L. Daggett

(Record, pp. 63-83)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

HERBERT L. DAGGETT, being duly sworn, deposes and says:

1) I am the president of the National Marine Engineers' Beneficial Association, AFL-CIO (hereinafter referred to as the "MEBA") one of the Defendants herein and make this affidavit in opposition to the motion of the Plaintiff for a temporary injunction, and in support of MEBA's cross-motion to dismiss the complaint.

2) As President, I am the chief executive officer of the MEBA. I have occupied such office since 1949 as a result of successive elections by the entire national membership of MEBA.

Prior to 1949, I was for several years the Business Manager of Subordinate Association No. 38 of MEBA, one of the locals of MEBA, with jurisdiction in Seattle, Washington.

3) The MEBA is a national labor union composed of many subordinate associations whose membership are licensed marine engineers.

Affidavit of Herbert L. Daggett

4) As the President of MEBA, it is one of my functions and duties to supervise and participate in the collective bargaining negotiations with the shipping companies with which MEBA has agreements. I am therefore fully acquainted with all such negotiations and with the terms and conditions contained in our agreements.

A brief explanation of the nature of such negotiations may be helpful.

Negotiations with the shipping companies covering ocean-going dry cargo and passenger vessels are divided between the West Coast companies as one group and the Atlantic and Gulf Coasts Companies as a second group.

The negotiations usually occur at the same time and the agreements are essentially the same—with one important difference, of great importance to this case, which will subsequently be noted.

On the West Coast, the separate shipping companies have authorized an association known as the Pacific Maritime Association to negotiate and execute a single agreement in their behalf. I attach as Exhibit A and make a part of this affidavit, a copy of our current Agreement covering the West Coast Companies.

On the Atlantic and Gulf Coasts, the major group of companies negotiate with MEBA through a Committee known as the "Committee for Companies and Agents, Atlantic and Gulf Coasts." The Plaintiff has not been a member of such Committee.

When the MEBA and such Committee reach agreement in negotiations, copies of said agreement are submitted to the Companies which are represented by the Committee for their individual execution.

Thereafter, the MEBA seeks to complete an agreement with those Companies which are not members of the aforesaid Committee.

Affidavit of Herbert L. Daggett

On occasions, where it has been mutually desirable, the MEBA has executed written preliminary agreements with those Companies, not members of the Committee for Companies and Agents, including the Plaintiff, which provide that any final agreement perfected between MEBA and the Committee for Companies and Agents would automatically become the agreement between MEBA and such independent Companies.

Where either the MEBA or any such independent Company has not desired such procedure, no preliminary written agreement has been executed and separate and independent bargaining ensues with each independent Company including the Plaintiff.

The fact that there has been independent negotiations between MEBA and the Plaintiff can be demonstrated as follows:

There is attached as Exhibit B a copy of the standard agreement between MEBA and the Companies represented by the Committee for Companies and Agents.

The Agreement between MEBA and the Plaintiff (while the same with respect to the crucial provisions to which reference will hereafter be made) is different and has for many years been different in several respects. For example:

(1) In Exhibit B, Section 3 is a provision covering "Physical Examinations." This provision through collective bargaining between the parties hereto is not included in the Agreement between Plaintiff and MEBA.

(2) In 1950, the Agreement between the parties contained a special clause dealing with a special large passenger vessel then operated by the Plaintiff, which clause was not in our standard Agreement.

(3) In 1954, a Captain O. Svendson, Port Captain of Plaintiff, wrote to MEBA stating that for the contemplated

negotiations, Plaintiff had problems unique to itself which it desired to cover apart from the negotiations with any other Company. A copy of such letter is attached as Exhibit C.

5) As of June 15, 1957 under the Agreement which MEBA has with the plaintiff, a wage review was available to MEBA. (See Exhibit B).

Section 39 of the Agreement provides in part:

> "During the period of this agreement, either party may request two wage reviews upon 60 days' prior written notice, provided however, that no wage review shall be held prior to June 15, 1956. Said wage review may include general wages * * * "

In accordance with this section, on April 11, 1957 I sent a written notice to the Plaintiff requesting a wage review. A copy of such notice is attached as Exhibit C.

The Plaintiff responded with a letter dated April 17, 1957, a copy of which is attached as Exhibit D. This letter will show, contrary to the claim of the Plaintiff, there was no agreement between the Plaintiff and the Defendant MEBA with respect to the wage review and that the Plaintiff actually contemplated negotiations with the Defendant after Defendant MEBA had completed its negotiations with the Committee for Companies and Agents.

On the basis of such notice, representatives of MEBA and the Plaintiff met on July 17, 1957 and August 5, 1957 to negotiate such wage review.

As of those dates, the MEBA had concluded its wage review negotiations with the Committee for Companies and Agents.

The MEBA, for reasons which it deemed applicable only to the Plaintiff, submitted its independent wage demands to the Plaintiff. There was no agreement, express

or implied, in connection with this wage review that the MEBA and Plaintiff were obligated to accept whatever agreement had been perfected between MEBA and the Committee for Companies and Agents. It is important to note that neither in the affidavit of Mr. Williams nor in the complaint is there any affirmative claim that any such agreement had been made between MEBA and the Plaintiff in connection with this wage review.

An impasse was reached between the MEBA and the Plaintiff in their negotiations on the wage review. The Plaintiff categorically rejected the wage demand submitted by MEBA. And the MEBA refused to accept the counter offer submitted by the Plaintiff. No compromise offer could be agreed upon.

There is attached as Exhibit E a copy of the demands submitted to the Plaintiff by the Defendant MEBA at its wage negotiations.

Plaintiff was clearly advised at the end of the discussions and in a subsequent telegram that in the face of such impasse, the MEBA was reserving the right to take whatever action it deemed necessary to protect the interests of its membership.

6) On August 21, 1957, the MEBA initiated its picketing, which was begun at the Plaintiff's terminal in Brooklyn, N. Y.

The picketing thus began by MEBA has been conducted exclusively and solely in behalf of MEBA's own independent dispute with the Plaintiff. Such picketing has absolutely no relationship with any other dispute which some other labor union may be simultaneously engaged in with the Plaintiff. MEBA has not acted in concert or conjunction with any other organization that may be engaged in a labor dispute with the Plaintiff.

7) This situation therefore raises the simple question whether the parties under their collective bargaining agreement contemplated that MEBA would have the right to strike, in the event an impasse were reached under a wage review prior to the actual termination date of the Agreement.

This issue will, of course, be more fully analyzed by counsel in our Brief and oral argument before the Court.

But in so far as the parties to the Agreement are concerned, there can be no question as to their intent.

(a) The wage review clause contained in Section 39 of the Agreement (See Exhibit B) does not contain a compulsory arbitration clause to be applicable in the event the parties reach an impasse. It is true that on several occasions in the past, in connection with a wage review, the parties in disagreement have submitted the issue to arbitration but on a mutually voluntary basis.

In 1952 when negotiations on a wage review were under way between MEBA and the Committee for Companies and Agents, Mr. Walter Maloney, then the Chairman of the Commitee, expressed in no uncertain terms that it was the interpretation of the Companies with reference to the wage review clause (which in 1952 was in form similar to that contained in the current Agreement) if an impasse was reached, the parties could, if they jointly agree, submit the issue to arbitration—but if either party refused to so submit, the other could not force arbitration under Section 2 of the Agreement covering "Grievance Procedure and Arbitration" (See Exhibit B).

At that time, MEBA simply stated that it was not contesting such view and in the face of such understanding, the MEBA would obviously have the right to strike in the case of an impasse over wage review—otherwise the wage review would be meaningless if an employer's "No" could not be tested either by arbitration or strike.

(b) To substantiate this interpretation I point to Section 7 of the Agreement (see Exhibit B) which contains a provision covering the fixing of wages for a type of vessel which might come into operation during the term of the Agreement. This provision permits the issue to be raised and it specifically states "in the event of disagreement in negotiations said issue *shall* be submitted to arbitration in accordance with the provisions of Section 2." (Provision covering Grievance Machinery and Arbitration.)

In other words this provision, inserted in our contract negotiations of June 1955 shows that when the parties wanted to provide for compulsory arbitration on a wage issue, they knew precisely how to handle it and did so specifically.

(c) I also point to Section 38 of our Agreement (Exhibit B). This Section title "Pension and Welfare Plan" provides for the establishment of a Pension and Welfare Plan through employer contributions. Paragraph 3 of such Section states:

> "3. There shall be a reopening on contributions to said Plan on June 15, 1958."

Pursuant to this Section, the Parties have executed a Master Agreement and Declaration of Trust which provides that the issue of the amount of contribution, subject to reopening, as above provided, shall be determined by "collective bargaining between the parties." Here again the parties specifically contemplated that a reopening clause was not to be subject to compulsory arbitration.

(d) Further, I point to our Agreement on the West Coast which is attached to this affidavit as Exhibit A. It will be noted that this Agreement is essentially the same in all basic respects with our current Agreement with Plaintiff.

However, on the issue of wage review contained in Section 32, the West Coast Agreement specifically provides that

> "The provisions of Section 2 shall be applicable in the event of disagreement at the time of wage review." (And Section 2 referred to is the same provision dealing with "Grievance Procedure and Arbitration.")

This provision in the West Coast Agreement was incorporated in the 1949 Agreement and has continued ever since.

The Parties to the Agreement on the Atlantic and Gulf Coasts were fully aware of such provision but consistent with the interpretation expressed by Mr. Maloney deliberately left it out in order to avoid the compulsory obligation, in the event of impasse, to submit a disputed wage review to arbitration.

(e) The parties to the Agreement clearly understood that Section 2 of the Agreement dealing with "Grievance and Arbitration Machinery" meant the following: Only such disputes as relate to the "interpretation or performance of this agreement" (See Section 2 of the Agreement, Exhibit B) could be made the subject of a grievance and be submitted to arbitration.

As shown, the general wage review could not be forced into arbitration under Section 2 by one party against the wishes of the other.

Therefore, the No Strike Clause *contained in Section 2* was intended to be confined exclusively to the type of disputes which were covered by Section 2.

(f) Mr. Williams in his affidavit states that the Defendant MEBA declined Plaintiff's offer presented by its counsel to arbitrate in the outstanding grievance. This is not a complete and accurate statement of what occurred in our negotiations.

Affidavit of Herbert L. Daggett

First let me state that at no time in our negotiations did Plaintiff claim, as they simply could not, that the issue in dispute, namely, the wage issue had to be submitted to arbitration under the section of the Agreement dealing with grievance machinery and arbitration. It was understood by both parties, the Plaintiff and the Defendant, that such wage issue that had arisen under the wage review with respect to which the parties had reached an impasse, was not an item which fell within the province of Section 2 of the Agreement covering grievance machinery and arbitration. At no time did the Plaintiff make any claim to the contrary. It is true that in the course of the negotiations, the parties discussed the possibility of voluntarily agreeing to the submission of the matter in dispute to arbitration. However, the parties were unable to agree as to the issues to be submitted to arbitration and thus no agreement could be arrived at.

(g) It would have been patently absurd for MEBA to enter into a three year agreement with a wage review on general wages and an understanding that compulsory arbitration of such wage issue in the event of an impasse was not available unless it was also understood between the parties that the MEBA upon such impasse could exercise its right to strike.

8) It is therefore submitted that our strike in support of our admitted wage demand, which has been refused by the Plaintiff, is clearly within the rights of MEBA and cannot in anyway be construed to be a breach of contract.

9) In view of the fact that MEBA on August 21 initiated its own independent picketing of the vessels of the Plaintiff because of its wage dispute with the Plaintiff, the members of MEBA have, with full justification, refused to man the vessels of the Plaintiff, which have thus been picketed.

It would be an anomaly that where a labor union was engaged in a labor dispute with an employer, that the employer can complain that the members of a labor union are refusing to accept employment with the employer.

But in any event, Plaintiff in its complaint and the affidavit of Milton Williams seem to contend that MEBA is in violation of its agreement with the Plaintiff because it has refused, when requested to do so, to furnish Plaintiff with competent and fit licensed marine officers. I point to Section 1 of the Agreement (Exhibit B) from which it should be obvious that under no circumstances is the MEBA *obligated* to furnish personnel. Section 1 of the Agreement imposes an obligation *upon the Plaintiff* under certain circumstances to request the MEBA for personnel; but there is absolutely not a single word contained in said Agreement, Section 1 or otherwise, which imposes any obligation on MEBA to provide such personnel. The Agreement specifically provides that where MEBA is requested to provide personnel and is unable to do so, the sole obligation imposed upon MEBA is to notify the Company of such fact so that the Company is then free to secure personnel from other sources.

10) As former Business Manager of Subordinate Association No. 38 of MEBA in Seattle, and as President of the MEBA, I am fully acquainted with the type of membership within the MEBA. Further, I hold a license as a Chief Marine Engineer. Prior to my becoming an official of a local and the National Organization, I sailed under my license for many years. As such, I am fully acquainted with the type of work performed by marine engineers who fall within the jurisdiction of the MEBA.

I can state most categorically that licensed marine engineers, who comprise the entire membership of MEBA,

without a single exception, in the nature of their work have authority in the interests of the employer for whom they may be working, to hire, transfer, suspend, lay off, recall, promote, discharge, sign, reward or discipline the unlicensed personnel who work in the engine department, over which the licensed engineers have supervision, or responsibility to direct such unlicensed personnel in the engine department, or adjust the grievances of the unlicensed personnel in the engine department, or to effectively recommend any such action. In the furtherance of their duties, licensed engineers do not exercise the authority just described merely as a routine or clerical nature, but they must exercise the use of independent judgment.

Every single member of the MEBA performs work of the nature which I have just described. The type of marine personnel over whom the MEBA assumes jurisdiction and takes in as members is precisely that which I have just described. We do not have any members who do not fall within such description, insofar as their duties and responsibilities are concerned.

It is undoubtedly true with respect to the licensed marine officers employed by the Plaintiff. They exercise precisely the duties and responsibilities, and the nature of their work is exactly as I have above described them.

11) Plaintiff in its complaint claims that when the members of Defendant MEBA refused to cross the picket line established by another labor organization, namely the SIU, when it initiated its strike on August 19, 1957 with respect to its own independent labor dispute between the SIU and the Plaintiff, MEBA was in violation of its agreement with the Plaintiff. I wish to call attention to a provision contained in the collective bargaining agreement between MEBA and the Plaintiff which is set forth in Section 2 of the Agreement. This provision is that:

"(h) No licensed engineer shall be required to work under conditions which may endanger his health or safety."

This provision has, historically and traditionally, been consistently understood by the parties to the many maritime collective bargaining agreements, all of which contain this or a substantially similar provision, to mean that a maritime union will not be deemed to be in violation of its contract when its members refuse to cross a picket line of another labor union where this is involved in carrying out their normal work and functions.

12) I have examined the records of the National office of the MEBA, which contain the home addresses of the members of MEBA. From such records I can definitely state that many individual members of the MEBA reside and are domiciled in the State of Delaware.

WHEREFORE, it is prayed that the motion for a temporary injunction herein be denied and the cross-motion to dismiss the complaint be granted.

HERBERT L. DAGGETT.

(Sworn to October 9th, 1957.)

Exhibit A, Annexed to Affidavit of Herbert L. Daggett

Agreement between National Marine Engineers Beneficial Association (Pacific Coast District) and Pacific Maritime Association. Effective date June 16, 1955.

(Copies of this exhibit will be handed up upon argument.)

Exhibit B, Annexed to Affidavit of Herbert L. Daggett

Agreement between National Marine Engineers Beneficial Association and Atlantic and Gulf Dry Cargo and Passenger Vessel Companies and Agents, June 18. 1955 to June 15, 1958.

(Copies of this exhibit will be handed up upon argument.)

Exhibit C, Annexed to Affidavit of Herbert L. Daggett

A. H. BULL & CO.
INCORPORATED
General Offices—115 Broad St., New York 4, N. Y.

April 7th, 1954.

Mr. Herbert L. Daggett,
Marine Engineers' Beneficial Assn.,
132 Third Street, S. E.,
Washington 3, D. C.

Dear Mr. Daggett:

We met today with Mr. James T. Smith, your Contract Enforcing Agent, regarding the renewal of our Contract with the Marine Engineers' Beneficial Association.

We discussed with Mr. Smith some of the problems we have had during the last year and upon his request we are writing you regarding same. They are as follows:

1. When a vessel is in port less than twenty-four (24) hours, sea watches are maintained and engineers demanding overtime for watches stood after 5 PM and before 8 AM, although they have not worked in excess of eight (8) hours.

Exhibit C, Annexed to Affidavit of Herbert L. Daggett

2. When engineers are maintaining night watches and sleeping in all night demands rest period the next day.'

3. We discussed the problem we have had when a ship calls at any continental U. S. port where she only loads part cargo and engineers are maintaining sea watches. Night engineers have reported on board and demanded to be engaged after 5 PM and before 8 AM and on Saturdays and Sundays although he has not been ordered by our agents.

4. The discrepancy between section 17 "Sea Watches", and section 26 "Rest Before Watch". On the day of departure sea watches usually are set at the beginning of the normal period of time required for warming up the engines before sailing.

Section 26, which states that: "No licensed engineer shall be required or permitted to take charge of a watch upon leaving or immediately after leaving port unless such officer shall have had at least six hours off duty within the twelve hours immediately preceding the time of sailing".

We feel that some of these matters ought to be discussed further before signing a new contract.

As you know, our run is entirely different from most of the steamship companies, as our vessels are on a two weeks' turn around and sea watches on our scheduled runs are maintained from the time they leave a Northern port until they arrive back North.

Very truly yours,

A. H. Bull & Co.,
Agents

/s/ O. Svendsen
O. Svendsen
Port Captain

OS/rs

Exhibit D, Annexed to Affidavit of Herbert L. Daggett

A. H. BULL & CO.
INCORPORATED

General Offices—115 Broad St., New York 4, N. Y.

April 17, 1957

National Marine Engineers
Beneficial Association
132 Third Street, S. E.
Washington 3, D. C.

Attention: Mr. H. L. Daggett, President

Gentlemen:

This will acknowledge your notice of your desire for a general wage review under the contract presently existing between this company and your organization.

As in the past we would prefer to defer any negotiations on the contract until after you have completed your negotiations with the representatives of the Institute. If this is agreeable to you we would appreciate a letter confirming this arrangement.

Very truly yours,

A. H. BULL & Co.,
Agents

/s/ M. WILLIAMS
M. Williams
Vice President
For Operations

NW:ED

Exhibit E, Annexed to Affidavit of Herbert L. Daggett

WAGE REVIEW DEMAND MADE ON BULL LINE

That in addition to the 6% wage increase granted in the Industry that the Licensed Engineers employed by the Bull Line be paid an additional amount sufficient to compensate them for a possible complete loss of their jobs through the transfer of their vessels to American Coal.

Affidavit of Lee Pressman

(Record, pp. 46-64)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF NEW YORK } ss.:

LEE PRESSMAN, being duly sworn, deposes and says:

I am the attorney for the National Marine Engineers' Beneficial Association, the defendant herein, and am personally familiar with the facts hereinbelow set forth.

Affidavit of Lee Pressman

I make this affidavit in opposition to plaintiff's motion for a temporary injunction and in support of defendant's cross-motion to dismiss the complaint.

On August 27, 1957 plaintiff herein instituted proceedings by Order to Show Cause, dated August 23, 1957, the affidavit of Milton Williams, sworn to August 22, 1957 and the Complaint, verified by the said Williams August 22, 1957.

The action was brought in the Supreme Court of the State of New York, County of Kings, Index Number 9860-57) and the proceedings were directed toward the issuance of a temporary and permanent injunction against defendant's strike and picketing of plaintiff's vessels.

The complaint alleged that the strike and picketing were in breach of a collective bargaining agreement between the parties and did not constitute a labor dispute within the meaning of New York's Little Norris-LaGuardia Act, Section 876 (a) of the Civil Practice Act. The issues in such case were precisely the same as in this case, except that in the State Court case no demand was made for a declaratory judgment or for damages. The Court, per Mr. Justice Cone, sitting in Special Term, Part I, denied the motion for a temporary injunction and dismissed the complaint on the ground that the case was covered by Section 876 (a) of the Civil Practice Act. A copy of said decision is annexed hereto and made a part hereof and labelled Exhibit "A".

On September 9, 1957, plaintiff, again by order to show cause, brought on a new application in the same part of the same court, for the relief previously denied. Plaintiff filed an amended complaint, verified by Mr. Williams on September 4, 1957, and a new affidavit by Mr. Williams sworn to September 3, 1957. This matter was heard by Mr. Justice Brown, who delivered an opinion confirming that the subject matter of the complaint established the

Affidavit of Lee Pressman

existence of a labor dispute between the parties and set the case down for a full hearing before Mr. Justice McCrate, to hear and report on the facts involved in the dispute. The new affidavit of Mr. Williams, and the said amended complaint verified by Mr. Williams, and the opinion of Mr. Justice Brown are annexed hereto and made a part hereof and labelled Exhibit "B", Exhibit "C" and Exhibit "D" respectively.

The date of the hearing before Mr. Justice McCrate has been set for October 14, 1957.

I was present in Court and argued on behalf of the defendant on August 29, 1957 and on September 9, 1957, when the aforesaid two orders to show cause were being presented to the Court. Mr. Cherbonnier of Satterlee, Browne & Cherbonnier argued for the plaintiff herein. The papers presented and the oral arguments made on behalf of the plaintiff embraced essentially what is now before this Court and on which a full hearing is to be held before Mr. Justice McCrate.

All that is new here is the demand for declaratory relief and damages.

LEE PRESSMAN.

(Sworn to October 8, 1957.)

Exhibit A, Annexed to Affidavit of Lee Pressman

Form 91

MEMORANDUM

SUPREME COURT

KINGS COUNTY

SPECIAL TERM—PART I

By CONE, *J.*

Dated September 3, 1957

———o———

A. H. BULL STEAMSHIP COMPANY

vs.

THOMAS ATKINS as President of the INTERNATIONAL ORGANIZATION MASTERS, MATES AND PILOTS, INC., and INTERNATIONAL ORGANIZATION MASTERS, MATES AND PILOTS, INC., a labor organization affiliated with the American Federation of Labor and Congress of Industrial Organizations, and H. W. PETERS as Business Manager and Secretary-Treasurer and IRVING A. LAMY and RUSSELL WOODMAN each as Asst. Business Manager and Asst. Secretary-Treasurer of the MARINE ENGINEERS' BENEFICIAL ASSOCIATION, and MARINE ENGINEERS' BENEFICIAL ASSOCIATION, a labor organization affiliated with the American Federation of Labor and Congress of Industrial Organizations.

———o———

SATTERLEE, BROWNE & CHERBONNIER, Esqs.
Attorneys for plaintiff
30 Broad Street
N. Y. 4, N. Y.

Exhibit A, Annexed to Affidavit of Lee Pressman

MARVIN SCHWARTZ, Esq.
Attorney for defendants Atkins and International Organization Masters, Mates and Pilots, Inc.
233 Broadway
N. Y. 7, N. Y.

LEE PRESSMAN, Esq.
Attorney for defendant National Marine Engineers Beneficial Association
225 Broadway
N. Y., N. Y.

The action herein is a companion to the motion by the plaintiff in its action against the Seafarers International Union of North America decided herewith. The motions seek similar relief upon facts almost identical. The reasons set forth in the disposition of the Seafarer's case are applicable herein and, accordingly, similar disposition is made herein. Settle order on notice.

(initialed)
J. C.
J. S. C.

Exhibit A, Annexed to Affidavit of Lee Pressman

Form 91

MEMORANDUM

SUPREME COURT

KINGS COUNTY

SPECIAL TERM—PART I

By CONE, *J.*
Dated September 3, 1957

—o—

A. H. BULL STEAMSHIP COMPANY

vs.

PAUL HALL, as Secretary-Treasurer, and CLAUD SIMMONS, EDWARD MOONEY and JOSEPH ANGING, each as Assistant Secretary-Treasurer of the SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, and SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, a labor organization affiliated with the American Federation of Labor and Congress of Industrial Organizations.

—o—

SATTERLEE, BROWNE & CHERBONNIER, Esqs.
Attorneys for plaintiff
30 Broad Street
N. Y. 4, N. Y.

SEYMOUR W. MILLER, Esq.
Attorney for defendants
26 Court Street
Brooklyn 1, N. Y.

Exhibit A, Annexed to Affidavit of Lee Pressman

Plaintiff moves for an injunction pendente lite enjoining the defendants from picketing its place of business or from interfering with the discharging, loading, moving or otherwise operating its vessels. Defendants cross-move to dismiss the complaint on the grounds that it fails to state facts sufficient to constitute a cause of action and that the court lacks jurisdiction of the subject matter.

The facts briefly reveal that the parties entered into an employment contract effective Oct. 15, 1956 and expiring Sept. 30, 1958. The contract contains a reopening and renegotiation clause relative to wages and other monetary matters. This clause in the preamble of the contract reads as follows:

> "Application by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause of termination of this agreement".

Article II, Section 4, further provides that there shall be no strikes, lockouts or stoppages of work while the provisions of this agreement are in effect. Predicated upon the reopening clause, notice was duly served upon plaintiff seeking a renegotiation of wages and other monetary matters. After a series of conferences, the parties reached a deadlock resulting in the picketing of plaintiff's place of business.

It is plaintiff's contention that the right of renegotiation and the failure to reach an amicable adjustment of wages, etc. did not carry with it the concomitant right to strike in support thereof but rather that the defendants were relegated to Section 3, Article II of the contract relative to the arbitration of grievances arising in connection with the performance of the agreement. That inasmuch as plaintiff is seeking to enforce the provisions of the agree-

ment between the parties, Section 876-a of the Civil Practice Act is not applicable. With this contention the court does not agree. A labor dispute does not lose its characterization as such merely because it occurs in violation of an agreement and if there is a bona fide labor dispute between the parties, the plaintiff may not avoid the requirements of Section 876-a merely by showing the violation of an agreement by defendants. (*Bert Mfg. Co.* v. *Local 810 etc.*, 136 Supp. 2nd 806.)

Section 876-a, subd. 10-e, in defining the term "labor dispute" reads as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations * * *."

It is needless to say that an impasse in wage negoations between an employer and the union bargaining in behalf of its employees constitutes a "controversy concerning terms or conditions of employment" within the meaning of the above-quoted sub-section. (*Vim Electric Co.* v. *Solomon*, 67 N. Y. S. 2nd 908). It would appear that in this state the weight of authority supports the proposition that a breach of a collective bargaining agreement constitutes a controversy concerning terms and conditions of employment and is a labor dispute within the meeting of Section 876-a. (*DiNeri et al*, v. *Gene Louis, Inc.*, 261 App. Div. 920, aff'd 288 N. Y. 592 [with modifications not here material]; *Scafidi* v. *Debnar*, 22 N. Y. S. 2nd 390; *Green Bus Lines, Inc.* v. *Flynn*, 61 N. Y. S. 2nd 663).

While the court is clearly sympathic to those employees not parties to the dispute who are unable to earn their livelihood because of the dispute, it finds that plaintiff is not

entitled to the relief sought sought herein since it must comply with Section 876-a, subd. 1 and 4.

Accordingly, the motion for an injunction pendente lite is denied, without prejudice to a renewal thereof if plaintiff is so advised upon the service of an amended complaint. In view of this disposition, the court grants the motion to dismiss with leave to serve an amended complaint.

(initialed)
J. C.
J. S. C.

Exhibit B, Annexed to Affidavit of Lee Pressman

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MILTON WILLIAMS being duly sworn deposes and says:

I am Vice-President in Charge of Operations of A. H. Bull & Co., Inc. I have represented our steamship lines in labor negotiations since 1936 with the exception of 4½ years spent in the service from 1941 to 1946.

To my personal knowledge there has been no direct collective bargaining negotiations between the International Organization Masters, Mates and Pilots, Inc. (which I shall hereafter refer to as MM&P) or the Marina Engineers' Beneficial Association (which I shall hereafter refer to as MEBA) and plaintiff for the past seven years. During this entire time it was mutually understood and agreed between plaintiff and MM&P and MEBA that the terms of any collective bargaining agreement or any amendments regarding monetary matters or working conditions which were agreed to between the MEBA and MM&P and the Committee for Companies and Agents representing member companies of the American Merchant Marine In-

stitute would be placed into effect and become the agreement between the MM&P and MEBA and plaintiff effective as of the same date that such changes became effective on the vessels of the companies represented by the Committee. The reason for this mutual understanding and agreement is due to the fact that plaintiff is not a member of the Committee.

There is at present a collective bargaining agreement between the MM&P and plaintiff which does not expire until September 30, 1958, and a collective bargaining agreement between the MEBA and plaintiff which does not expire until June 15, 1958, which agreements provide under "Grievance Procedure and Arbitration":

> "There shall be no strikes, lockouts or stoppages of work during the period of this agreement."

When the last wage increase of 6% was agreed to in collective bargaining between the MM&P and the Committee and the MEBA and the Committee which became effective June 16, 1957 plaintiff notified both the MM&P and the MEBA that it was prepared to sign the same wage amendment increase but both the MM&P and the MEBA refused to sign the same agreement with plaintiff that they had signed with the member dry cargo companies of the Committee,

When the MM&P and the MEBA prepared their respective standard collective bargaining agreements covering the officers on the dry cargo vessels operated on the Atlantic and Gulf Coasts the name of plaintiff was incorporated in both of the said standard agreements published by the respective Unions as will be seen on page 54 of Exhibit A and page 41 of Exhibit B attached to the original complaint and incorporated by reference and made a part of the amended complaint.

Exhibit B, Annexed to Affidavit of Lee Pressman

At no time has either the MM&P or the MEBA made any specific demands on plaintiff but has refused to sign the same collective bargaining agreement with plaintiff that they have signed with other companies on the ground that the 6% increase granted by the other companies and accepted by the MM&P and MEBA was not acceptable in the case of plaintiff.

When the MM&P and the MEBA went on strike on August 21st against plaintiff and picketed its vessels then in the port of New York such action constituted a breach of the collective bargaining agreements with plaintiff as it was clearly recognized and mutually understood that both the MM&P and the MEBA had no right to strike under any wage reopening because each contract provided for arbitration of any dispute that might arise between the parties.

Submitted with this affidavit is a copy of the amended complaint which I have verified on behalf of the plaintiff in this action and which I incorporate by this reference in this affidavit. As will be seen from the amended complaint the individual defendants herein and the defendant Unions have caused through picketing and other means stoppages of work aboard four of plaintiff's vessels presently at plaintiff's Brooklyn piers. These stoppages of work clearly violate the "no strike" clauses of the present collective bargaining agreements between plaintiff and defendant Unions.

This unlawful strike has already caused plaintiff great and irreparable injury through the tie-up of their vessels with a consequent loss of substantial freight business to plaintiff's competitors. Unless this unlawful strike is promptly enjoined, plaintiff will continue to suffer great and irreparable injury for which no adequate legal remedy exists.

In addition to the damage caused plaintiff by virtue of the present delay in the movements of the SS Frances, the

Exhibit B, Annexed to Affidavit of Lee Pressman

SS Kathryn, the SS Beatrice and the SS Elizabeth plaintiff has other vessels whose operations could be affected unless defendants are enjoined.

Plaintiff has no adequate legal remedy because the damage done to plaintiff's position in the shipping industry and to its good will amongst its customers is incalculable in monetary terms.

Plaintiff asks to proceed by an Order to Show Cause because the damage presently being suffered by the continuing acts and activities of the defendants herein necessitating a prompt hearing and disposition of its application for an injunction *pendente lite*.

Application for similar relief was made in the original complaint which was denied with leave to file an amended complaint and the amended complaint is in compliance with the Order dated September 3, 1957 of Justice John E. Cone of this Court.

WHEREFORE I respectfully submit that an injunction *pendente lite* substantially in the form set forth in the Order to Show Cause submitted herewith should issue forthwith.

MILTON WILLIAMS.

(Sworn to September 4, 1957.)

Exhibit C, Annexed to Affidavit of Lee Pressman

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

A. H. BULL STEAMSHIP COMPANY,

Plaintiff,

against

THOMAS ATKINS as President of the INTERNATIONAL ORGANIZATION MASTER, MATES AND PILOTS, INC., and

INTERNATIONAL ORGANIZATION MASTERS, MATES AND PILOTS, INC., a labor organization affiliated with the American Federation of Labor and Congress of Industrial Organizations, and

H. W. PETERS as Business Manager and Secretary-Treasurer and IRVING A. LAMY and RUSSELL WOODMAN each as Asst. Business Manager and Asst. Secretary-Treasurer of the MARINE ENGINEERS' BENEFICIAL ASSOCIATION, and

MARINE ENGINEERS' BENEFICIAL ASSOCIATION a labor organization affiliated with the American Federation of Labor and Congress of Industrial Organizations,

Defendants.

Plaintiff, A. H. Bull Steamship Company, by Satterlee, Browne & Cherbonnier, its attorneys, alleges upon information and belief as follows:

Exhibit C, Annexed to Affidavit of Lee Pressman

1. Plaintiff is and at all times hereinafter mentioned was a corporation organized and existing under the laws of the State of Delaware and is engaged in and carrying on a business affecting commerce, to wit, that of a common carrier by water in foreign and intercoastal trade with its principal office at 115 Broad Street, New York, New York, and within the jurisdiction of this Court.

2. The defendant Thomas Atkins as President, hereinafter called individual defendant, is a citizen of the State of New York and defendant International Organization Masters, Mates and Pilots, Inc., hereinafter called MM&P, is and at all times hereinafter mentioned was and at the time of the filing of this complaint is an incorporated labor organization with its principal office located at 107 Washington Street, New York, New York, and is subject to the jurisdiction of this Court.

3. The defendants, H. W. Peters as Business Manager and Secretary-Treasurer and Irving A. Lamy and Russell Woodman each as Asst. Business Manager and Asst. Secretary-Treasurer, are citizens of the State of New York and defendant, Marine Engineers' Beneficial Association, hereinafter called MEBA, is and at all times hereinafter mentioned was and at the time of the filing of this amended complaint is an unincorporated association, to wit, a labor organization with its principal office located at 752 Broadway, New York, New York, and is subject to the jurisdiction of this Court.

4. On or about July 1, 1955 plaintiff and the MM&P duly entered into and signed a written collective bargaining agreement covering certain classifications of persons employed by plaintiff, to wit, the licensed deck officers aboard the American flag ocean going dry cargo vessels operated by plaintiff. The said agreement is now in full

force and effect and does not expire until September 30, 1958. A copy of such agreement was attached to the original complaint and marked Exhibit A and is incorporated herein by reference and made a part hereof. Section 3(a) thereof provides:

> "There shall be no strikes, lockouts, or stoppages of work during the period of this agreement. * * *"

5. On or about June 18, 1955 plaintiff and the MEBA duly entered into and signed a written collective bargaining agreement covering certain classifications of persons employed by plaintiff, to wit, the licensed engineer officers aboard the American flag ocean going dry cargo vessels operated by plaintiff. The said agreement is now in full force and effect and does not expire until June 15, 1958. A copy of such agreement was attached to the original complaint and marked Exhibit B and is incorporated herein by reference and made a part hereof. Section 2(a) thereof provides:

> "There shall be no strikes, lockouts or stoppages of work during the period of this agreement."

6. The defendant Unions negotiate their standard dry cargo vessel collective bargaining agreements on the Atlantic and Gulf Coasts with a committee representing certain American flag dry cargo vessel operators known as the "Committee for Companies and Agents".

7. Plaintiff is not directly represented by the said "Committee for Companies and Agents" but has for many years past and now has the same agreement with the MM&P and the MEBA as negotiated with the said Committee.

Exhibit C, Annexed to Affidavit of Lee Pressman

8. Exhibit A, which is prepared and published by the MM&P, attached to the original complaint and incorporated herein by reference and made a part hereof, shows on its face at page 54 that plaintiff is a party to the said agreement.

9. Exhibit B, which is prepared and published by the MEBA, attached to the original complaint and incorporated herein by reference and made a part hereof, shows on its face at page 41 that plaintiff is one of the independent companies, parties to the standard Atlantic and Gulf Coast dry cargo and passenger ship agreement.

10. In June 1957 the MM&P and the MEBA agreed with the Committee for Companies and Agents to an increase in wages amounting to approximately 6% effective as of June 16, 1957.

11. In accordance with its usual practice of long standing plaintiff offered to sign with the MM&P and the MEBA an amendment to its existing collective bargaining agreement granting respectively to its licensed deck officers and its licensed engineer officers the same increase as had been agreed to between the Committee for Companies and Agents and the MM&P and the MEBA but the defendant Unions refused to sign the negotiated agreement with plaintiff.

12. The MM&P and the MEBA are labor organizations representing supervisory personnel and the members of the defendant Unions are not employees within the meaning of the Labor Management Relations Act of 1947, as Amended.

13. On August 21, 1957 while the SS Frances and the SS Kathryn, each owned and operated by the plaintiff,

were moored at plaintiff's terminal in Brooklyn, New York, the MM&P and the MEBA each called a strike against plaintiff in violation of their respective collective bargaining agreements and the individual defendants, without warning to plaintiff, caused these two vessels and the property of plaintiff to be picketed and said property and vessels are now being picketed.

14. The said picketing of the SS Frances and the SS Kathryn, which vessels have large quantities of perishables aboard, prevented their cargoes from being unloaded.

15. The said picketing has caused stoppages of work and is in violation of the written collective bargaining agreement which the MM&P and the MEBA each has with plaintiff and is not the result of a labor dispute as that term is defined by Section 876-a of the Civil Practice Act of New York.

16. Plaintiff is in full compliance with all the terms of its collective bargaining agreements with both the MM&P and the MEBA and plaintiff has not refused to comply with any of the terms of said agreements.

17. The defendants have no legal right to cause stoppages of work by picketing plaintiff's property or its vessels as such picketing is causing stoppages of work in violation of the terms of the existing collective bargaining agreements between the plaintiff and the MM&P and the plaintiff and the MEBA.

18. The classifications of persons represented by the MM&P and the MEBA being supervisory personnel, the said picketing is not the result of a labor dispute as that term is defined in the Labor Management Relations Act of 1947, as Amended.

Exhibit C, Annexed to Affidavit of Lee Pressman

19. The action taken by defendants in causing the property and vessels of the plaintiff to be picketed has caused and is causing plaintiff serious loss, damage and irreparable injury, for which plaintiff has no adequate remedy at law in that plaintiff has lost and will continue to lose the business of its regular customers who, but for the aforesaid picketing, would be engaging plaintiff's vessels for the transportation of cargoes and that if said picketing is not immediately restrained perishable commodities presently aboard the SS Frances and the SS Kathryn will be destroyed.

20. Delay in granting the coercive relief herein prayed for would result:

(a) In the continued and continuing repetition of the unlawful act of picketing with no proper justification.

(b) In the continued and continuing irreparable loss and damage to plaintiff as well as to its tangible and intangible property.

(c) In the continued and continuing repetition of the unlawful acts herein described against which plaintiff has no adequate remedy at law.

(d) In greater injury to plaintiff than will be inflicted upon defendants by the granting of relief sought.

(e) In the continued and continuing irreparable loss and damage to plaintiff as well as to its tangible and intangible property against the loss and damage to which the public officials charged with the duty to protect plaintiff's property would be unable to furnish adequate protection in that the

Exhibit C, Annexed to Affidavit of Lee Pressman

acts of defendants have not been riotous, disorderly or outwardly destructive.

WHEREFORE, plaintiff respectfully prays that this Court issue an appropriate Order temporarily and permanently restraining and enjoining the individual defendants and the defendant Union and all of its officers, representatives, agents, servants, employees, attorneys and all members or persons acting in concert or participation with it, (a) from breaching or otherwise violating the present collective bargaining agreement between plaintiff and defendant Unions, and (b) from engaging in or inciting any strike or work stoppage, or by picketing or by issuing, directly or indirectly, any orders, directions, instructions, appeals or by any like or related acts or conduct or by permitting any such to remain in existence or effect, otherwise preventing or interfering in any way with the discharging, loading, moving or operating of the SS Frances, the SS Kathryn, or any other vessel owned or operated by the plaintiff, A. H. Bull Steamship Company, so long as the present collective bargaining agreement between the parties remains in effect, and for such other and further and different relief as in the premises may be deemed necessary, adequate and proper.

SATTERLEE, BROWNE & CHERBONNIER,
Attorneys for Plaintiff,
Office and P. O. Address,
30 Broad Street,
New York 4, New York.

(Verified by Milton Williams, September 4, 1957.)

Exhibit D, Annexed to Affidavit of Lee Pressman

Form 91

MEMORANDUM

SUPREME COURT

KINGS COUNTY

(SPECIAL TERM, PART I)

By BROWN, J.

A. H. BULL STEAMSHIP COMPANY,

vs.

THOMAS ATKINS as President of the INTERNATIONAL ORGANIZATION MASTERS, MATES AND PILOTS, INC. et al., etc.

Dated September 19, 1957

Plaintiff moves for an injunction pendente lite in an action arising out of the breach of a collective bargaining agreement.

Defendants cross-move to dismiss the amended complaint upon the ground of insufficiency and upon the further ground that the complaint fails to comply with the requirements of Section 876a of the Civil Practice Act.

This court has already determined that this case is a "labor dispute" as that term is defined in said section (Decision of Cone, J., N. Y. L. J. 9/5/57, p. 9, col. 8). By the same decision the original complaint was dismissed with leave to amend on the ground that the requirements of subdivisions 1 and 4 of Section 876a had not been complied with.

Affidavit of Charles T. Atkins

The allegations of the amended complaint now meet the requirements of that section (*Carroll Towing Co. v. Bradley*, 91 N. Y. S. (2) 431 (not otherwise reported), affd. 275 App. Div. 1022). Accordingly, the cross-motion to dismiss the amended complaint is denied.

The hearing required by Section 876a shall be held before Official Referee John MacCrate.

Settle order on notice.

J. S. C.

Affidavit of Charles T. Atkins

(Record, pp. 102-107)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

CHARLES T. ATKINS being duly sworn deposes and says:

Since 1952 I have been the International President of the International Organization of Masters, Mates & Pilots, erroneously sued herein as International Organization of Masters, Mates & Pilots, Inc., AFL-CIO, which is a Union representing ninety percent of the Licensed Deck Officers employed aboard American Merchant Marine vessels.

I have represented our Organization in labor negotiations since 1946.

This affidavit is submitted in opposition to plaintiff's motion for a temporary injunction and in support of defendants' cross motion to dismiss the complaint.

A. H. Bull & Co., Inc., is a common carrier engaged in the transportation of goods at sea.

Affidavit of Charles T. Atkins

The plaintiff erroneously states that during the past seven years it has been mutually understood and agreed between plaintiff and defendants that the terms of any Collective Bargaining Agreement agreed upon between defendants and American Merchant Marine Institute, (an employer association composed of Atlantic and Gulf Coast steamship companies, hereinafter referred to as AMMI) would become the Agreement between the plaintiff and the International Organization of Masters, Mates & Pilots (hereinafter referred to as MMP). While it is true that the plaintiff is not a member of the AMMI and has therefore, never participated in the formulation of the language of the Agreements, there has never been any mutual understanding that the plaintiff and the defendants were bound by the AMMI Collective Bargaining Agreement although the AMMI contract was adopted by the plaintiff. On at least two occasions the plaintiff granted benefits to defendants which were greater than those contained in the AMMI Collective Bargaining Agreement. In 1951, the plaintiff granted an increase of 25¢ per day per Licensed Deck Officer to the plaintiff's contribution to the Pension & Welfare Plan. This increase was not in effect with any of the AMMI companies.

Also, in the latter part of 1955 the plaintiff recognized MMP as Collective Bargaining representative for the masters employed aboard plaintiff's vessels. There is no requirement under the AMMI Collective Bargaining Agreement for such recognition. Paragraph four of the complaint is in error in alleging that defendant's agreement with the plaintiff covers employment relations of licensed deck officers excluding masters. All of defendant's members covered by the contract are supervisors.

If the plaintiff had participated in the formulation of the language of the AMMI contract, it would know that during the Collective Bargaining Sessions the contract between MMP and Pacific Maritime Association (the West

Coast counterpart of the AMMI, hereinafter referred to as PMA) is frequently referred to as a basis for comparison of provisions.

The AMMI Collective Bargaining representative, and our negotiating committee are fully familiar with the provisions of the PMA Collective Bargaining Agreement (Exhibit B). Omissions or differences are always discussed at considerable length and any differences remaining are intentional.

The issue of whether or not to include arbitration and it accompanying no strike provision under the wage review as provided in the AMMI Collective Bargaining Agreement has been discussed on many occasions. The omission of the provisions was not an oversight. The question of whether or not to adopt the PMA provisions was discussed by both the AMMI representatives and the Union's representatives; particularly your deponent. In fact a compromise was reached in the case of vessels of power tonnage of 25,000 tons and over or vessels with a new type power plant, (see Pg. 7 of Collective Bargaining Agreement, attached hereto as Exhibit A). It was specifically agreed that "in the event of disagreement in negotiations said issue shall be submitted to arbitration * * *." We certainly would never have included this provision if the general arbitration clause which contains the no strike provision in the Collective Bargaining Agreement was intended to cover contract changes.

The other monetary issue which would require changing the contract concerned the daily rate of employer contributions to the Pension & Welfare Plan (See Section 36 of Exhibit A). On this issue, the MMP, during negotiations demanded the right to review the daily contributions during the life of the Collective Bargaining Agreement. However, the AMMI insisted that there be no review. Thereupon the MMP requested the same provision as in the case of vessels with a power tonnage in excess of 25,000 tons

i.e., arbitration, but the employer remained adamant and the MMP finally accepted the following contract provision. "There shall be no reopening on contributions to said Plan prior to September 30, 1958."

The no strike agreement is only an agreement not to strike solely over those matters referable to arbitration under the grievance provision of Section 3. These are "all disputes relating to the interpretation or performance" of the Agreement.

Under its agreement MMP is not obligated to furnish officers to plaintiff. On the contrary, the agreement in Section 2(m) merely provides that plaintiff, shall obtain officers below the rank of Master and Chief Mate through the offices of defendant. If defendant fails to supply men for positions of Second and Third Officers, plaintiff can get them elsewhere. Defendant does not guarantee to make its members work. Defendant has never refused, and plaintiff does not claim that defendant has refused to give clearance to officers hired by defendant.

Under the terms of the present Collective Bargaining Agreement between the plaintiff and the MMP, the MMP is entitled to a wage review upon tendering 60 days prior written notice. The MMP served notice for a wage review in accordance with the aforesaid terms of the Collective Bargaining Agreement. Thereafter, the plaintiff and the representatives of the MMP, including your deponent, met in order to negotiate a proper wage increase. Despite the earnest negotiations of the MMP, and the presentation by your deponent of a specific written demand, no agreement could be reached. Thereafter, on August 20, 1957, the defendant commenced to picket plaintiff, maintaining a single picket patrolling each of two gates owned by plaintiff steamship company. The pickets have carried signs requesting the general public to take a handbill offered by the picket. The handbill contains an explanation that the dispute is solely with the plaintiff steamship company and

that defendant has no complaint or difference with any other employer who may be doing business with plaintiff steamship company.

Deponent denies the assertion by Milton Williams in his affidavit that no specific wage demands were made by defendant, that "job security" was discussed and that defendant insisted it had no real dispute with defendant. Defendant clearly stated to plaintiff that it demanded an increase in excess of 6% because of the likelihood of its members' jobs being terminated. No amount was specified only because plaintiff flatly refused to discuss such an increase and made it clear it would not agree to an increase of 7% or even 6½%. The dispute was not referred to arbitration because plaintiff and defendant could not agree on the terms and scope of an arbitration.

Deponent denies that MMP ordered its members to respect and support the seamen's picket lines and to cease all work aboard plaintiff's vessels. To the contrary, when the seamen commenced striking defendant's members continued working in compliance with Section 3(f) of the contract. This provides:

> "It is understood that in the event a picket line is established against any vessel, the Licensed Deck Officers of such vessel will report and perform all of their normal duties incidental to the security of the vessel, passengers and cargo, provided that no Licensed Deck Officer shall be required to work under conditions which may endanger his health or safety. The Organization undertakes to use its best efforts to obtain clearance for such purpose from the Union establishing the picket line."

This provision requires the Licensed Deck Officers to perform the duties of the security of the vessel, passengers and cargo and this was done. The provision does not re-

quire the Officers to continue working indefinitely behind a picket line. These obligations cease once they have attended to the security of the vessel, passengers and cargo.

In San Juan, Puerto Rico, defendants' members also fulfilled all obligations under Section 2(f) before leaving the vessels. In fact, the Masters remained aboard even though they are members of the Organization. Section 2(f) does not require defendants' members to discharge cargo and sail vessels which are being struck.

Plaintiff refers to an order of Judge Bruchausen which enjoins the strike of the unlicensed seamen "and all persons in active concert or participation" with it. Plaintiff has alleged not a shred of evidence in support of any contention that defendant has been in "active concert or participation" with the unlicensed seamen. Plaintiff's own complaint shows a history of contracts and independent labor disputes. Defendant is an independent Organization. If plaintiff really believed it could prove such a contention it would have attempted to have defendant cited for contempt of the order, rather than bring this independent action.

WHEREFORE, your deponent respectfully prays that the plaintiff's application for an injunction be denied, and defendants' cross-motion to dismiss complaint be granted.

/s/ CHARLES T. ATKINS

(Sworn to October 8th, 1957.)

Exhibit A, Annexed to Affidavit of Charles T. Atkins

ATLANTIC AND GULF COAST

MASTER

DRY CARGO AND PASSENGER AGREEMENT

between

INTERNATIONAL ORGANIZATION MASTERS,
MATES AND PILOTS, INC.

and

DRY CARGO AND PASSENGER COMPANIES

Effective Date July 16, 1955

(Copies of this Exhibit will be handed up upon argument)

Exhibit B, Annexed to Affidavit of Charles T. Atkins

AGREEMENT

between

PACIFIC MARITIME ASSOCIATION

and

INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS INC.

West Coast Local No. 90, A F of L

covering

INTERCOASTAL OFFSHORE AND ALASKA TRADES

Effective Date October 1, 1953

(Copies of this Exhibit will be handed up upon argument)

Affidavit of Marvin Schwartz

(Record, pp. 84-101)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MARVIN SCHWARTZ, being duly sworn deposes and says:

I am the attorney for defendant International Organization of Masters, Mates & Pilots, sued herein as International Organization of Masters, Mates & Pilots, Inc. (hereinafter called MMP) and submit this affidavit in opposition to plaintiff's motion for an injunction *pendente lite* and in support of the cross-motion to dismiss the complaint.

This action is not governed by the decision made in plaintiff's suit against Seafarers' International Union of North America, Atlantic & Gulf Districts since that action concerned a collective bargaining agreement containing different provisions and concerned employees, not supervisors.

PEACEFUL PICKETING CANNOT BE ENJOINED

The complaint alleges a two-fold jurisdiction of this Court. One is based upon diversity of citizenship and the other upon Section 301 of the Labor Management Relations Act of 1947. Deponent contends that if jurisdiction is based upon diversity of citizenship, this Court cannot issue an order restraining any person or persons participating or interested in a labor dispute from ceasing or refusing to

perform any work, or from giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence. Norris-LaGuardia Act, 29 U. S. C. 101 et seq. Under this Act peaceful picketing in a labor dispute cannot be enjoined. Since the complaint fails to allege that the picketing is other than peaceful, it fails to state a claim upon which relief can be granted. Even if it does state a claim, Norris-LaGuardia requires this Court to hold a hearing before granting an injunction.

Deponent further submits that the complaint fails to state a claim under Section 301 of the Labor Management Relations Act of 1947. Section 301(a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

This Section authorizes a suit against the defendant only if it is "a labor organization representing employees in an industry affecting commerce." Deponent submits that defendant is not a labor organization and does not represent employees.

AN ORGANIZATION OF SUPERVISORS IS NOT A LABOR ORGANIZATION WITHIN THE NATIONAL LABOR RELATIONS ACT

The term "labor organization" is defined in Sec. 2(5) of the Labor Management Relations Act which reads as follows:

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan *in which employees participate* and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Emphasis ours.)

The term "employee" is defined two paragraphs above in the same Section. This definition, Sec. 2(3), reads as follows:

> "The term 'employe' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, *but shall not include* any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any person having the status of an independent contractor, *or any individual employed as a supervisor,* or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as defined herein." (Emphasis added.)

It is, therefore, apparent on the face of the language contained in Sec. 2 (3) set forth above, that certain types of employees are specifically excluded from coverage by the Act. Agricultural workers, domestics, independent contrac-

tors, employees subject to the Railway Labor Act, and *individuals employed as supervisors*, are all specifically excluded.

Further along in Sec. 2, the term "supervisor" is defined. Sec. 2 (11) reads as follows:

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment."

The jobs represented by defendant MMP aboard plaintiff's vessels are Master (Captain), Chief Officer, Second Officer and Third Officer. These seagoing officers exercise their authority aboard ship pursuant to licenses granted to them by the U. S. Coast Guard. Along with the defendant, MEBA, they have traditionally been recognized as one of the large supervisory groups who are organized into associations maintaining collective bargaining agreements with their employers. The fact that the members of respondent MMP are clearly supervisors, was quickly utilized by employers. In *NLRB* v. *Wyandotte Transporation Co.*, 166 F. (2d) 434 (CA-6; 1948), the Board had ordered the responded Wyandotte to cease and desist from its unfair labor practices against the MMP. In June of 1947, the Court of Appeals for the 6th Circuit entered a decree enforcing the order of the Board. Several months later, the Taft-Hartley Amendments became effective and the respondent petitioned the Court for a re-hearing. On the basis of the fact that MMP represented supervisors and, therefore, was no longer under the Act, the Court set aside its prior decree of enforcement.

Shortly thereafter, in *Globe Steamship Co.*, 85 NLRB 474 (1949). the members of the defendant MEBA were held to be supervisory employees and outside of the Act. The following excerpts from the Board's Opinion are helpful:

> "This evidence discloses that considerable responsibility is delegated to the assistant engineers by virtue of their accountability for specific items of machinery, and through their position as the heads of the engine department watches. Their responsibilities, moreover, are accompanied by a commensurate degree of control over unlicensed personnel. Thus, the record shows that assistant engineers can make effective recommendations to the chief engineer with respect to the hire, discharge, disciplining, and promotion of the unlicensed engine department personnel, and the settlement of their grievances. Indeed, the record indicates that the power to settle grievances are sometimes exercised by them directly without the intervention of the chief engineer.
>
> "A power to command, moreover, stands further as the most fundamental and most frequently used of the supervisory powers possessed by the assistant engineers. Such a power is in fact inherent in their status as licensed ship's officers. It manifests itself conspicuously during their twice-daily watches as a power responsibly to direct the work of the unlicensed personnel,—for without their command power, there would be no controlling head during these watches, since only in the unusual cases does the chief engineer take over.[15]

[15] Federal statutory law has a direct bearing upon the status of assistant engineers on Great Lakes vessels; Assistant engineers in charge of watches must be licensed by the U. S. Coast Guard, and are "officers" (46 U. S. C. A. Secs. 221, 222, and 224). A licensed officer, before entering upon his duties, must take oath that he will

> "The inherent command function of the assistants is further emphasized in the practice whereby each succeeds to the position of head of the engine department when the officer next highest in rank is absent or incapacitated.
>
> "The record shows that the exercise by the assistant engineers of the supervisory powers described above requires that they use independent judgment in evaluating the performance and capabilities of the unlicensed personnel, and in coping with the varied situations arising in the engine department—many of which are directly related to the safety of their vessels and fellow crew members. The fact that assistant engineers may frequently be called upon to perform considerable manual labor is not incompatible with their possession of supervisory powers."

Even where the Masters, Mates & Pilots voluntarily submitted itself to the jurisdiction of the National Labor Relations Board, the Board has held that it has no jurisdiction. The following excerpts from the Board's Opinion, *Wilson Transit Co.* v. *Masters, Mates & Pilots*, 80 NLRB 1476 (1948), is authority for this.

> "(3) The petitioner seeks in each case a unit composed of licensed pilots who sign on as mates, on all ships owned and operated, and on all ships operated but not owned, by each of the Companies. The petitioner contends that the employees sought are not supervisory professional employees. The

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faithfully and honestly perform all the duties required of him by law (46 U. S. C. A. Sec. 231). For negligence, unskillfulness, willful violation of law, or refusal to perform official duties while employed on a vessel, an officer's license may be suspended or revoked. (46 U. S. C. A. Sec. 229 and 240). (Ed. note: 46 U. S. C. A. Sec 221, 222 and 224 applies to *all* licensed officers aboard *all* merchant vessels.)

employers contends that such unit is inappropriate since they do not employ any pilots as such; that the employees for whom the petitioner would bargain collectively are mates who are qualified to serve as pilots, and that these individuals are supervisors within the meaning of the Act. The employers have no history of collective bargaining with respect to the employees sought herein.

"At the beginning of the shipping season in early Spring, the mates, who report from 3 to 10 days before the Master, are required to make the vessels ready for official inspection and navigation. As part of such duties they may be called upon to hire certain unlicensed crew members in order to complete the ship's complement of personnel, without which the vessel would not receive its certificate of inspection from the United States Coast Guard. The first mate takes charge of the work and assigns certain tasks to the other mates. Each mate is responsible for the work of the crew members assigned to him and for the satisfactory completion of the work. When the ship is ready to leave port, the Master comes aboard and takes charge. The mates are then required to stand watch, and the Master delegates to the mates the duties of maintaining and providing for the upkeep of the vessel. In the absence or incapacity of the Master, the First Mate assumes complete control over the vessel. Should the First Mate also be absent or be incapacitated, the Second Mate takes charge, and in corresponding circumstances, the Third Mate will take command of the ship."

Further, in *Colle Towing Co., Inc.*, 85 NLRB 899 (1949), the Board held Mates to be supervisors even when serving

on board tug boats. Personnel aboard tug boats are not required to be licensed and, therefore, the employer claimed no one was a supervisor. The Board, nevertheless, held Mates to be supervisors, referring to the fact that they are traditionally recognized as supervisors. The opinion of the Board reads, in part, as follows:

> "Although the record shows clearly that the captain aboard each vessel exercises supervisory authority, not only in the direction of the vessel, but in the authority to discharge or recommend effectively the discharge of personnel, the record does not clearly establish the status of mates and engineers. However, it is clear that mates and engineers, although unlicensed, perform the same duties as licensed personnel in similar classifications. Such personnel have been regarded both traditionally and by the Board as officer personnel, and the Board has recognized that their interests are substantially different from those of other employees aboard a vessel. Under the circumstances, we are of the opinion that captains, mates and engineers should be excluded from the unit hereinafter found appropriate."

With regard to the various criteria set forth in the definition of supervisor, it is important to remember that a person need not fulfill all of the requirements of the definition in order to be so classified. In *Ohio Power Co.* v. *NLRB*, 176 F. (2d) 385 (CA-6; 1949), the Court said that qualifications established in the definition of supervisor are applicable in the disjunctive. The same Court in *NLRB* v. *Budd Mfg. Co.*, 169 F. (2d). 1571 (CA-6; 1948), held that in order to be classified as a supervisor, an individual need only have one or more of the types of authority specified, *not all of them.* Further it has been held that the status of supervisor depends upon the *exist-*

ence of the authority, and not upon the frequency with which it is exercised. *NLRB* v. *Quincy Steel Casting Co., Inc.*, 200 F. (2d) 293 (CA-1; 1952). It has also been held that persons in supervisor classifications were supervisors even though they did not yet have subordinates. *Peter Kewit Sons Co.*, 106 NLRB 30 (1953).

In *DiGiorgio Fruit Corp.* v. *NLRB*, 191 F. (2d) 642 (CA-5; 1951), the specific problem of the applicability of the secondary boycott, and other unfair practices by labor organizations, was carefully analyzed. This case involved an organization of agricultural employees. Referring to the definition of the term "employees" at pages 2-3, supra, we note that agricultural employees are specifically excluded as well as supervisors. Obviously the Court's argument is applicable to all excluded classes.

A complaint had been issued by the General Counsel of the Board charging a local Union, designated as Farm Union, with violating the secondary boycott provision of Sec. 8(b) 4(A). The General Counsel's office contended that the Farm Union was a "labor organization" within the meaning of the statute, even though its members did not come within the definition of employees as contained in Sec. 2(3) of the Act. The National Labor Relations Board rejected this contention and never even reached the question of whether or not the activities of the Farm Union constituted a secondary boycott. The Board held that the statute did not apply to the Farm Union. Thereupon, the General Counsel appealed to the Court.

The Court quoted Sec. 8(b) 4(A) of the Act as follows:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> " * * *
>
> "(4) * * * to induce or encourage the employes of any employer to engage in, a strike or a concerted refusal in the course of their employment to * * *

transport, or otherwise handle or work on any * * * commodities or to perform any services, where an object thereof is: (A) forcing or requiring * * * any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *"

In analyzing the meaning of this statutory language the Court said:

"The first consideration upon this point is quite simple, a matter of statutory language. The statute, as will be noted from the above quotation, relates to an unfair labor practice of 'a labor organization or its agents.' That is, the only unfair labor practices to which the statute applies are such practices of 'a labor organization or its agents.'

"Section 2 of the Act contains statutory definitions. It provides, among other things:

"'Sec. 2. When used in this Act—

"' * * *

"'(3) The term "employee" shall include any employee, * * * but shall not include any individual employed as an agricultural laborer, * * *.

"' * * *

"'(5) The term "labor organization" means any organization of any kind * * * in which employees participate * * *.'

"Thus, according to the language of the Act, 'employees' must participate in an organization if it is to be deemed a labor organization within the meaning of the statute, and agricultural laborers are

> not included within the statutory term 'employees'. Hence, so far as the words of the statute are concerned, the Farm Union, being composed exclusively of agricultural laborers, is not a labor organization within the meaning of the statute, and so a secondary boycott by the Farm Union would not fall within the prohibitions of the statute."

After the above analysis the Court considered carefully certain questions of legislative intent which are applicable only to agricultural employees. Apparently there is a substantial amount of legislative history indicating that the secondary boycott provision of the statute had as one of its prime objectives the protection of farmers. However, the clear statutory language was held to override this argument.

Further, the Court referred, with approval, to the opinion of the Board which was based upon an analysis of all the provisions of Sec. 8(b) of the Act, dealing with other unfair labor practices. The Board reasoned that to include associations of agricultural laborers within the definition of "labor organization" under Sec. 8(a) and 8(b) would be incongruous with the exclusion of such workers from the definition of "employee" contained in Sec. 2(3). The Court upheld the Board's reasoning as follows:

> "Section 8(b) of the Act, from which we have quoted in part, and which makes illegal an unfair labor practice of a labor organization, includes not merely the clause relating to secondary boycotts but contains six paragraphs dealing with other practices or acts. These other paragraphs do not seem to refer to organizations of agricultural laborers. The Board says that this meaning is obvious because, if these other paragraphs were applicable to organizations of agricultural laborers, the exclusion of such la-

borers from the definition of 'employee' would be completely wiped out. Thus, for example, the first paragraph declares that it shall be an unfair labor practice for a labor organization to restrain or coerce employees from the exercise of the rights guaranteed in Section 7 of the Act, and Section 7 is the section which declares that 'Employees shall have the right to * * * bargain collectively through representatives of their own choosing'. The incongruity and conflict resulting from giving the term 'employees' its statutory defined meaning, excluding agricultural employees, but at the same time giving the term 'labor organization' a non-statutory meaning so as to include agricultural laborers through Section 8(b), is emphasized by the Board. Moreover, the Board points out that Section 8(a), which makes illegal an unfair practice by employers, and thus bestows rights and benefits on employees, uses the term 'labor organization' throughout. We think that the section conferring benefits (Section 8(a) and the section imposing restrictions (Section 8(b)), which are sub-divisions of the same section of the Act, must be construed in harmony; and that, if they be construed to apply to organizations of agricultural laborers, they would nullify the exclusion of such laborers from the statutory definition of 'employees'."

Further along in its opinion, the Court makes clear that it considers agricultural employees to be outside of the purview of the Act both as to privileges and restrictions. The Court said:

"At the same time, it seems indisputably clear that Congress did not intend to include within either the

benefits or the restrictions of the Act, organizations composed exclusively of agricultural laborers."

* * *

"The problem can readily be presented again to the Congress for its determination. The ultimate problem whether secondary boycotts by agricultural laborers should be forbidden is for the Congress and not for the courts. We cannot decide what ought to be done in such a matter; our function is merely to ascertain what Congress has already done."

It is thus apparent that organizations of all people who are excluded from the definition of "employee" are not labor organizations within the purview of Secs. 8(a) and 8(b). This is further supported by the legislative history of the Act concerning supervisors. House Report No. 245 on HR 3020 states that the Bill deprives the Board of jurisdiction over supervisors. House Minority Report No. 245 on HR 3020 objected to the exclusion of supervisory employees and stated that withdrawing recognition of the rights to organize and bargain collectively and with it the orderly machinery for achieving organization would not eliminate unionism among supervisors. The Report said "it will force them instead to the alternative of economic self-help * * *."

In the discussion in the House, it was also made clear that the supervisors do not have the benefits of the Act and are also excluded from the restrictions of the Act. They are left to all of the self-help remedies which existed prior to the passage of the Wagner Act. The following excerpts from the Congressional Record, House, April 15, 1947 are illustrative:

Question by Mr. Crawford, "Does the Bill provide for any kind of union for foremen or supervisors?" Answer by Mr. Gwynn, "It does not; it simply ex-

cludes them so that supervisors or foremen may organize as they did before the Wagner Act, but they have no standing under this Bill."

Representative Klein of New York, referring to the excluded supervisors said, "If they desire to organize against the employers' will, their only weapon will be to resort to the strike, the very result which the Wagner Act was intended to avert."

Senator Taft, in discussing this question in the Senate, Congressional Record, Senate, April 23, 1947, said in relation to supervisors, "They may form unions if they please, or join unions, but they do not have the protection of the National Labor Relations Act. They are subject to discharge for union activity, and they are generally restored to the basis which they enjoyed before the passage of the Wagner Act." Senator Johnson of South Carolina said, Congressional Record, Senate, May 2, 1947, "* * * I find it equally difficult to see why these employees should not be held to the same high standing of conduct which would be required of organized labor by the provisions of this Bill. Now, if there is a union of supervisors I believe that their interests should equally be protected by law and that these unions should be held to the same degree of responsibility as other unions."

Therefore, it was made clear from the discussions prior to the passage of the Act that supervisory employees are excluded from all provisions of the Act, both those granting privileges to labor organizations and those placing restrictions upon them.

Affidavit of Marvin Schwartz

SECTION 301 AUTHORIZES SUITS AGAINST LABOR ORGANIZATIONS ONLY FOR VIOLATIONS OF CONTRACTS COVERING EMPLOYEES

Although defendant clearly is not a labor organization, defendant further contends that Section 301(a) does not grant jurisdiction or give a cause of action against defendant, even assuming that defendant be held to be a labor organization. There is a distinction between the language used in Section 301(a) and that in Section 8(b) which refers to unfair labor practices. Section 8(b) states:

> "It shall be an unfair labor practice for a *labor organization* or its agents—" (Emphasis supplied)

whereas Section 301 clearly refers to "a labor organization *representing employees.*" (Emphasis supplied.) The distinction in language must have some meaning. Section 301 obviously means that there may be some organizations which are labor organizations because they represent employees as well as non-employees or supervisors. Such an organization could be sued under Section 301 only for violating a contract covering employees. Even if it should be determined that defendant is a labor organization, it does not here represent employees, but represents only supervisors in relation to plaintiff. Therefore, it is submitted that Section 301 does not support the plaintiff's complaint and plaintiff has failed to state a claim upon which relief can be granted.

THERE IS NO BREACH OF CONTRACT BECAUSE UNDER THE COLLECTIVE BARGAINING AGREEMENT THE MMP MAY STRIKE IN CONNECTION WITH AUTHORIZED WAGE REVIEWS

It is further submitted that defendant has not breached its contract with plaintiff because under the collective bar-

gaining agreement the MMP may strike in connection with authorized wage reviews.

Section 1(c) of the Collective Bargaining Agreement (Exhibit A annexed to affidavit of Charles T. Atkins) provides:

> "During the life of the Agreement either party may request two wage reviews upon 60 days prior written notice provided, however, that no wage review shall be held prior to September 30, 1956. Said wage review may include general wages, overtime and penalty rates, and additional compensation for Masters and non-watchstanding Licensed Deck Officers and the rate for Relief Deck Officers."

The labor dispute in question arose out of a wage review requested by MMP upon 60 days prior written notice and was subsequent to September 30, 1956. The wage review covered no items not specified in Section 1(c). The Contract affords the MMP only one method of settling labor disputes arising out of the wage review—the strike. No provision is made for arbitration of a wage review dispute. The general contract provision which provides for arbitration is Section 3, entitled "Grievance Procedure and Arbitration." It provides for *arbitration of disputes relating to the interpretation and performance*[1] *of the Agreement and provides* that there shall be no strikes, lockouts or stoppages of work over grievances for which arbitration machinery is provided. This refers not to all possible disputes between the parties but to those concerning the meaning of the Contract. The only no strike agreement is con-

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[1] Webster's New Collegiate Dictionary defines interpretation and performance as follows:

Interpretation: Explanation, construction, or sense given by an interpreter.

Performance: The execution of the functions required of one.

tained in the Grievance and Arbitration Section. It is not in any of the general introductory sections and is not specified in connection with the wage review. It obviously is applicable only to those disputes covered by Section 3. These are the grievances which arise aboard ship and relate to the normal ship routine, disputes between an individual or a group of employees and the company about unlawful discharge, hours of labor in port, port time arrival and departure, work between the hours of 5:00 p.m. and 8:00 a.m., work by Licensed Deck Officers after midnight, hours of labor at sea, confinement of officers to vessel in port, posting of sailing time, disputes as to overtime and penalty time, etc. The grievance machinery was developed for these disputes, and not to determine wage reviews.

That Section 3 does not apply to all disputes is shown by the following cases in which similar language has been construed.

In *The Matter of Marchant* v. *Mead Morrison Mfg. Co.*, 252 N. Y. S. 284, 169 N. E. 386 (1929), an arbitration clause had the following language:

> "If for any reason any controversy or difference of opinion which arises as to the construction of the terms and conditions of this contract or as to its performance, it is mutually agreed that the matter in dispute shall be settled by arbitration . . . ."

In construing this language Judge Cardozo said at pages 299-300:

> "The Clause to be interpreted is instinct with tokens of a purpose to encompass the submission with limitations and conditions. *It does not say that any and all controversies growing out of the contract shall be settled by arbitration.* The submission is to be confined to controversies or differences of opinion as to 'the construction of the terms and conditions' of the

contract, and controversies or differences as to the 'performance' of the contract. Each of these phrases is to be weighed in association with each other • • • The words 'as to performance' do not stand in isolation. If they had been understood to cover everything, there would have been no sense in providing for arbitration as to the meaning or construction of the 'terms and conditions' • • •

"We think there was no intention to clothe the arbitrators with power to settle every difference having its genesis in the contract. Their function was more modest. Questions might arise as to the meaning of the contract or the plans and specifications. The arbitrators were to give the answer. Questions might arise as to the performance of covenants and conditions where there was no doubt as to the meaning. Again the arbitrators would answer." (Emphasis supplied.)

Even if the language in the present contract referred only to "all disputes", cases have held that this language is not sufficient to render all disputes subject to arbitration. In the case of *In re Amsterdam Dispatch* 254 App. Div. 233, 4 N. Y. S., Supp. 2d 908, the Contract provided:

"should any difference arise between employer and employee, the same shall be submitted to arbitration by both parties."

The Court said:

"These arbitration provisions when read with the provisions of paragraph 13 that 'during that time (the term of contract) there shall be no revision or modification of this agreement' must be held to be limited to 'any difference • • • between employer and

> employee' concerning the construction effect or performance of the contract. It should not be extended to allow either party to invoke arbitration to create a contract for them."

There is one other instance wherein the Collective Bargaining Agreement provides for the use of arbitration. This is Section 9 which makes arbitration applicable to one specific type of wage dispute. This involves only wage disputes concerning vessels of 25,000 tonnage or over or vessels with a new type of power plant. This Section provides:

> "Section 9—Wages * * * When vessels of power tonnage of 25,000 tons and over or vessels with a new type power plant are put into operation the Organization shall have the right to raise the issue of the wages to be paid to the Licensed Deck Officers aboard said vessels and in the event of disagreement in negotiations said issue shall be submitted to arbitration in accordance with the provisions of Section 3."

Thus, whenever the parties to the Contract intended to make a dispute subject to arbitration, they have done so specifically. The absence of a reference to arbitration in connection with the wage review and the specific reference in connection with ships of 25,000 tons and over and vessels with a new type of power plant shows an intent not to submit the wage review to arbitration. When the parties wanted arbitration they knew how to say so specifically.

There is no agreement not to strike in connection with the wage review. Since arbitration is not provided, the strike is the only means available to the Union in a wage review dispute.

In this connection it is interesting to note the MMP Agreement with the Pacific Maritime Association, which covers the West Coast. (Exhibit B appended to affidavit

of Charles T. Atkins). This Agreement in language almost identical with that of the Contract with Bull Lines provides for a wage review. It then specifically and clearly provides for the applicability of the Grievance Procedure and Arbitration when a dispute arises as the result of the wage review.

This Agreement provides in Section 1:

> "Either party to the agreement may request two wage reviews upon sixty (60) days prior written notice, provided, however, that no wage review shall be held prior to June 15, 1956. Said wage review may include general wages, overtime and penalty rates, the additional compensation for Master and non-watchstanding Licensed Deck Officers and the rate for Relief Deck Officers. The provisions of Section 3 shall be applicable in the event of disagreement at the time of Wage Review. (Amended August 3, 1955.)
>
> "If no agreement is reached through negotiations in thirty (30) days after receipt of such notice of review, the issues shall be referred to arbitration. The arbitrator's decision shall be rendered by the review date, and shall take effect at 12:01 A. M. on the day following the review date."

Thus the West Coast Agreement substitutes arbitration for the right to strike in wage review disputes. This was not done in the case at bar. Without the right to strike and without arbitration, a wage review would be meaningless. The West Coast Agreement provided for arbitration of wage review disputes as far back as 1953, two years prior to the execution of the instant contract. The contents of the West Coast Agreement were known to the negotiators of the instant contract, but the arbitration reference was specifically omitted.

There are three instances in the contract where matters not relating to interpretation and performance of the contract are involved. In addition to the general wage review provided for in Section 1 the wage scale for vessels of power tonnage of 25,000 tons and over or vessels with a new type power plant, provided for in Section 9 already discussed, a monetary reference is also made at Section 36 relating to pension and welfare contributions made by the employer. Here again the issue of changing this contractual provision was considered at the time the contract was negotiated. In this instance the AMMI was successful in obtaining the concession from the Organization that there would be no reopening on contributions in any manner—negotiation, arbitration or by strike.

A Preliminary Injunction Cannot Be Granted Where There is a Substantial Question of Law Or Fact

Plaintiff takes several inconsistent positions as to the nature of defendants' activities. It admits defendant is on strike in paragraph 9 of the complaint while in paragraph 12 it claims in effect that defendants' members stopped working because Seafarers' was striking. In the affidavit of Milton Williams it alleges that defendant is acting in concert or participation with Seafarers' International Union.

Deponent further submits that a preliminary injunction may not be granted where there is a substantial question of law or fact involved, whether or not the action concerns a labor dispute. New York Courts have recently reiterated this doctrine in the case of *Shenker Displays* v. *Goldman*, 144 N. Y. S., 2d 7 (1955). The Court there said:

"The drastic relief inherent in a temporary injunction may not be granted where sharp issues of fact

exist, *Geed* v. *Braunsdorf*, 277 App. Div. 1001, 1002, 100 N. Y. S. 2d 181, 182, or if the ultimate result is in doubt, *Gitlin Bay Co.* v. *Bresky*, 279 App. Div. 370, 107 N. Y. S. 2d 550."

Other cases sustaining this hornbook principle are, *Standard Library* v. *Addes*, 167 Misc. 469 and *Voorhees & Hobart* v. *Hobart*, 251 App. Div. 111.

In this action complex, factual and legal questions are raised as to whether defendant is a labor organization, whether it represents employees and whether there had been a breach of contract.

It is respectfully submitted that plaintiff has failed to state a claim under Section 301 of the Labor Management Relations Act of 1947 since defendant is not a labor organization representing employees; that the Norris-LaGuardia Act prohibits the granting of an injunction assuming this Court has jurisdiction based upon diversity of citizenship and that defendant has not breached its contract with plaintiff.

WHEREFORE, it is respectfully requested that plaintiff motion for an injunction *pendente lite* be denied and defendants' cross-motion to dismiss be granted.

MARVIN SCHWARTZ

(Sworn to October 9, 1957.)

Supplemental Affidavit of James V. Hayes

(Record, pp. 108-113)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

JAMES V. HAYES, being duly sworn, deposes and says:

1. I am a member of Donovan Leisure Newton & Irvine, who, with Messrs. Satterlee, Brown & Cherbonnier, are attorneys for the plaintiff A. H. Bull Steamship Co. herein. I make this affidavit in support of plaintiff's application for an injunction pendente lite and for the express purpose of putting before the Court certain considerations relevant to the anticipated position of the defendant unions that they are not "labor organizations representing employees in an industry affecting commerce" so as to be subject to suit under Section 301 of the National Labor Management Relations Act as amended (29 U. S. C. Section 185[a]).

2. We do not anticipate that any controversy in this regard will turn on whether Bull is engaged in "an industry affecting commerce" inasmuch as Bull is a prominent member of the American-flag ocean-going dry cargo shipping industry. It will be contended, I believe, that the defendant associations admit to membership and represent only supervisory employees within the meaning of the term "supervisors" as defined in Section 2(11) of the Act (29 U. S. C. Section 152 [11]).

Supplemental Affidavit of James V. Hayes

3. In regard to defendant International Organization of Masters, Mates and Pilots, Inc. ("MMP") two facts stand out at the outset:

(a) MMP's Constitution. Article 25, Section 1, specifically makes eligible to membership in MMP locals "any person employed in the maritime industry *not* working under the authority of a license." Upon information and belief, MMP has admitted, in the past, and presently admits non-supervisory personnel to membership and represents such members for collective bargaining purposes pursuant to this provision of its Constitution.

(b) Insofar as plaintiff Bull is concerned, the various ship captains (or "masters"), the officers who alone are responsible for the ships' operations, are expressly excluded from the bargaining unit administered by MMP. In other words, MMP represents, in the case of Bull, only the subordinate deck officers.

4. Similarly, I am informed, defendant Marine Engineers Beneficial Association ("MEBA" herein) also represents in various bargaining units throughout the shipping industry non-supervisory personnel. I am informed that this is the case in various seacoast locations including the Port of Hampton Roads and with various shipping companies including specifically the United States Lines where MEBA represents various licensed engineering officers who enjoy no supervisory status whatsoever.

5. As pointed out in the Memorandum submitted herewith, this Court has already had occasion to determine the status of these defendants under the National Labor Relations Act. We there submit extracts of Judge Bruchhausen's decision of February 26, 1957 in Civil No. 17269, granting an NLRB petition to temporarily enjoin these

same defendants from conducting secondary picketing and a boycott of a Brooklyn shipyard. Thus, we find that this Court—after a full hearing at which these defendants, represented by the same counsel who appear in this case, had an opportunity to present all available evidence on the question--has found these unions to be subject to injunction under the Act. No appeal was taken from that decision.

I have in my possession a copy of the transcript of the testimony taken before Judge Bruchhausen on that occasion and shall, of course, submit this transcript to this Court if desired. Most pertinent, perhaps, of the evidence adduced at that hearing was the fact that each of these defendants has in the past filed with the NLRB the non-Communist affidavits required of officers of a "labor organization" under Section 9(h) [29 U. S. C. Section 159(h)] as a prerequisite to the invoking of any of the rights of a labor organization as such provided in the National Labor Relations Act, as amended. MMP President Atkins and MEBA President Daggett have filed such qualifying affidavits.

6. (a) As of December 30, 1956, MMP had invoked the jurisdiction of the National Labor Relations Board as a petitioning labor organization on no less than thirteen occasions and on at least five of these occasions was accepted and dealt with by the Board as a labor organization. I have reference to the following:

Sinclair Refining Co., Case No. 2-RC-4734
Sinclair Refining Co., Case No. 14-RC-1912
Marine Transit Co., Case No. 13-RC-3733
Economy Boat Stores, Case No. 14-RC-2549
Blue Stack Towing Co., Case No. 10-RC-2947.

In addition to the foregoing, MMP was permitted to intervene in *Commercial Barge Lines, Inc.*, Case No. 35-RC-314.

(b) As of December 20, 1956, MEBA had invoked the jurisdiction of the National Labor Relations Board as a petitioning labor organization on no less than seven occasions and on at least six of these occasions was accepted and dealt with by the Board as a labor organization. I have reference to the following:

American Barge Line Co., Case No. 6-RC-419
Ohio Barge Line, Inc., Case No. 6-RC-615
O. F. Shearer & Sons, Case No. 9-RC-1100
Blue Stack Towing Co., Case No. 10-RC-2958
North Star Fisheries, Case No. 19-RC-1746
Aleutian Marine Transport Co., Case No. 19-RC-1761

In addition to the foregoing, MEBA also appeared as a recognized union in *San Francisco Towboat Operators*, Case No. 20-RC-3037.

7. The NLRB has specifically found both MMP and MEBA to be labor organizations in *J. W. Banta Towing Co., Inc.*, 116 NLRB 1787, decided prior to this Court's decision in Civil No. 17269. The Board's general counsel has also in recent months authorized the issuance of complaints alleging that MMP and various of its locals are labor organizations in cases stemming from various actions taken by MMP in connection with Bull's parent corporation, American Coal Shipping, Inc. In this regard I have reference to Case No. 2-CC-410; Case No. 5-CC-71; and Case No. 10-CC-289.

Moreover, the NLRB's Second, Fifth and Tenth Regional offices have all in the past Spring dismissed complaints filed by either or both of these associations upon the grounds that, while they are labor organizations within the meaning of the Act. they are no longer in compliance with Section 9(f), (g) and (h) of the Act. Thus, on May

23, 1957 Fifth Regional Director John A. Penello, in dismissing charges filed by MMP, commented as follows:

> "It does not appear that further proceedings are warranted inasmuch as the charge has been filed by and on behalf of a labor organization which has not complied with the provisions of Section 9(f), (g) and (h) of the Act, as amended. I am, therefore, refusing to issue Complaint in this matter."

8. Finally, in at least two recent instances following upon this Court's decision in Civil No. 17269 other Federal District Courts have found MMP to be a labor organization. I refer to *Penello* v. *Seafarers International Union, et al.,* Civil No. 2371, E. D. Va., and *Getreu* v. *MMP, et al.,* Civil No. 906, S. D. Ga., Savannah Div.

9. I submit that the foregoing fully warrants this Court in holding defendants MEBA and MMP to be "labor organizations representing employees in an industry affecting commerce" as defined in the National Labor Relations Act as amended.

JAMES V. HAYES.

(Sworn to on October 9, 1957.)

Supplemental Affidavit of Lee Pressman

(Record, pp. 27-38)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

LEE PRESSMAN, being duly sworn, deposes and says:

1. I am the attorney for the defendant National Marine Engineers' Beneficial Association, AFL-CIO, herein.

I make this supplemental affidavit in reply to the affidavit submitted by James V. Hayes in this proceeding.

2. In Paragraph 4 of the aforesaid supplemental affidavit, Mr. Hayes states:

> "I am informed, defendant Marine Engineers Beneficial Association ('MEBA' herein) also represents in various bargaining units throughout the shipping industry non-supervisory personnel."

And further in this paragraph, Mr. Hayes makes another statement which is predicated on what he has been "informed."

Certainly the statements contained in said Paragraph 4 of the supplemental affidavit cannot be accepted as statements of fact in support of an allegation contained in a complaint, which allegation is vital to sustain the jurisdiction of the court. A statement as to what counsel is "informed" can not be accepted as a substitute for specific facts.

Supplemental Affidavit of Lee Pressman

This should be compared with the specific and direct averments made by H. L. Daggett, President of the MEBA, in his affidavit which describe the duties and responsibilities of all the members of MEBA which clearly make them supervisors as defined by the Taft-Hartley Act. President Daggett specifically negates the suggestion that MEBA represents non-supervisory personnel.

I can state as of my own personal knowledge that the MEBA does not represent any personnel in the United States Lines who enjoy no supervisory status. To the contrary, MEBA represents, as far as the United States Lines (which is the only specific company named in the specific affidavit) is concerned, only licensed engineer officers, who enjoy supervisory status.

3. In Paragraph 5 of the supplemental affidavit, Mr. Hayes refers to the decision of Judge Bruchhausen on February 26, 1957, in Civil number 17269.

In our oral argument we pointed out that this proceeding was on a petition to temporarily enjoin the MEBA, among others, from conducting an alleged secondary boycott.

It was in this proceeding that President Daggett also testified with respect to the filing of the non-Communist affidavits with the National Labor Relations Board. His testimony was to the effect that such affidavits were filed not because of any feeling or understanding on the part of the MEBA that it was a labor organization, but rather pursuant to a policy determined by the MEBA to file such affidavits to demonstrate that the officers of the MEBA were not Communists. Judge Bruchhausen undoubtedly must recall that in the course of this same proceeding, counsel for the National Labor Relations Board conceded that the Labor Board accepted such affidavits for filing, regardless which organization might present the same, and made no inquiry as to whether the organization submitting the affi-

davits was a labor organization or not, and that the filing of the same did not indicate whether the organization was a labor organization or not.

Finally, the aforesaid proceeding was one brought under Section 10(1) of the Taft-Hartley Act, which specifically provides that a temporary injunction must issue where the court finds "reasonable cause to believe" that a secondary boycott has been committed. This is the only standard of proof required. In a similar proceeding before Judge Hoffman in the United States District Court in Norfolk, the opinion of Judge Hoffman indicates that while the Board may have sustained its burden of proof of "reasonable cause to believe," the preponderance of evidence in that case showed that MEBA was not a labor organization within the meaning of the term as defined in the Taft-Hartley Act. (Copy of opinion was left with Judge Bruchhausen).

4. In Paragraph 6(b) of the supplemental affidavit, Mr. Hayes, enumerates seven cases with respect to which he states that the MEBA has invoked the jurisdiction of the National Labor Relations Board as a petitioning labor organization, and that in at least six of these cases, MEBA was accepted by the Board as a labor organization. The facts are as follows:

In one of these cases, namely, Aleutian Marine Transport Co. Case No. 19-RC-1761, the MEBA was not even involved. In that case it was the Brotherhood of Marine Engineers, AFL-CIO, which was in the proceeding and was certified by the National Labor Relations Board as the collective bargaining representative for the employees therein covered. The Brotherhood of Marine Engineers is a completely different organization and has nothing whatever to do with the MEBA.

In four other cases, namely, Ohio Barge Line, Inc., O. F. Shearer & Sons, Blue Stack Towing Co. and North Star

Fisheries, the Regional Directors of the Labor Board refused to hold elections in such cases on the ground that the employees involved were "supervisors."

In the American Barge Line Company case, the Regional Director held a consent election at the joint request of the employer and the MEBA, which under the then outstanding rules of the Labor Board, the Regional Director was permitted to do even though the employees involved were "supervisors."

In the last case, namely San Francisco Towboat Operators, it was the employer which petitioned for an election and the petition was withdrawn by the employer on the ground that the employees involved were "supervisors."

In all of the aforesaid cases (other than the Aleutian Marine Transport Co. case, of which I have no knowledge because the MEBA was not involved) the personnel involved were marine engineers—and as indicated all were found to be "supervisors."

5. In Paragraph 7 of the supplemental affidavit, Mr. Hayes makes reference to the J. W. Banta Towing Company case.

With respect to this case, I am attaching as Exhibit A a certified copy of a motion made in behalf of MEBA before the National Labor Relations Board, requesting that the record in the Banta case be opened and leave be given to amend the answer on behalf of MEBA, and to receive evidence on the issue as to whether MEBA is a labor organization, together with a copy of an affidavit submitted by H. L. Daggett in support of this motion, and the order of the Labor Board denying the motion.

In that case, the Labor Board, it is true, found that the MEBA was a labor organization, but specifically upon the ground that the answer submitted by MEBA admitted such fact. There was no evidence presented in the case on this issue.

Supplemental Affidavit of Lee Pressman

The affidavit of President Daggett explains very directly that the answer filed in said case, which admitted that MEBA was a labor organization, was filed without the knowledge of any official of the MEBA and without the authorization of the MEBA, and that the admission on this issue was not true in fact and completely contrary to the actual fact.

6. The second paragraph of Paragraph 7 of the supplemental affidavit would seem to be inapplicable to the MEBA, since there is no reference contained therein to the MEBA.

7. Therefore, on the issue as to whether the MEBA is a labor organization within the meaning of the Taft-Hartley Act—which is one of the essential ingredients to establish the jurisdiction of this court to entertain the suit brought by the plaintiff—we have the direct statements of H. L. Daggett which negate this fact and establish that the MEBA is not a "labor organization." On the other hand, though the plaintiff has the burden to establish such essential fact, we have offered but slight inferences or inaccurate statements.

We also find that the verified complaint filed by the plaintiff in the state court proceeding (which is attached to my previous affidavit) has a specific allegation (Paragraph 12 thereof) that

> "The members of the defendant unions (which includes the MEBA) are not employees within the meaning of the Labor Management Relations Act of 1947, as amended."

If all the members of the MEBA are not employees as defined by the Taft-Hartley Act, then clearly under the DiGiorgi case, cited in our brief, the MEBA cannot be held to be a labor organization.

In any event, plaintiff has not furnished a single fact to challenge the contention of MEBA that the marine engineers covered by the very collective bargaining agreement for breach of which the suit has been initiated, are "supervisors" as defined by the Taft-Hartley Act and therefore not "employees." To the contrary, the aforesaid verified complaint filed by the plaintiff in the state court proceeding specifically avers in two separate paragraphs that the personnel of the plaintiff covered by the collective bargaining agreement with MEBA are "supervisors" and that all members of MEBA are "supervisors."

8. I respectfully submit that the foregoing compels this court to hold that the plaintiff has completely failed to make any showing with respect to the necessary statutory requirements which must be present before this court can assume jurisdiction of the suit under Section 301 of the Taft-Hartley Act.

The plaintiff has failed to show that:

(a) The suit is for a violation of a contract between an employer and a "labor organization"; and

(b) The contract covers "employees' in an industry affecting commerce.

These are the jurisdictional requirements of Section 301(a) of the Taft-Hartley Act.

It certainly cannot be contended that such requirements are met by merely showing that the contract, for breach of which suit has been brought, is between an employer and a labor organization even though the employer is not in an industry affecting commerce or that the contract does not cover "employees' but the labor organization chances to represent employees in some other industry affecting commerce. Such contention would mean that where an em-

ployer is not engaged in an industry affecting commerce so that the contract in question does not cover "employees" in an industry affecting commerce, but the contract is with a labor organization which by chance happens to otherwise represent "employees" in another industry affecting commerce, a suit may be brought by such employer in the Federal Court for the breach of its contract. The mere statement of the position reveals how preposterous it is.

LEE PRESSMAN

(Sworn to to this 11th day of October, 1957.)

Exhibit A, Annexed to Affidavit of Lee Pressman

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

I, FRANK M. KLEILER, Executive Secretary of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of the Order Denying Motions, Notice of Motion, and Affidavit of Herbert L. Daggett In the Matter of National Organization Masters, Mates and Pilots of America, Inc. AFL-CIO; and National Marine Engineers Beneficial Association, AFL-CIO; and National Maritime Union of America, AFL-CIO; and Rivers Joint Organizing Committee; and their Agent Gordon C. Knapp and J. W. Banta Towing Company, Inc. and Plaquemine Towing Corporation, Case No. 14-CB-291.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of September 20, A. D. 1957 at Washington, D. C.

FRANK M. KLEILER,
Executive Secretary.

(SEAL)

Exhibit A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 14-CB-291

NATIONAL ORGANIZATION MASTERS, MATES AND PILOTS OF AMERICA, INC, AFL-CIO; and NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO; and NATIONAL MARITIME UNION OF AMERICA, AFL-CIO; and RIVERS JOINT ORGANIZING COMMITTEE; and their Agent GORDON C. KNAPP

and

J. W. BANTA TOWING COMPANY, INC. and PLAQUEMINE TOWING CORPORATION

ORDER DENYING MOTIONS

On December 18, 1956, the Board issued a Decision and Order [1] in the above-entitled proceeding. Thereafter, about May 29, 1957, Respondent National Organization Masters, Mates and Pilots of America, Inc. AFL-CIO filed a motion for leave to amend its answer and to reopen the record and receive evidence upon the proposed amendment. About June 7, 1957, Respondent National Marine Engineers

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[1] 116 NLRB 1787.

Exhibit A

Beneficial Association, A. L-CIO, filed a motion seeking the same relief in its own behalf. The Charging Companies in this case, about June 10, 1957, filed opposition. The Board having duly considered the matter, and having found no sufficient reason for granting the relief requested,

IT IS HEREBY ORDERED that the motions of the respective Respondents be, and they hereby are, denied.

Dated, Washington, D. C., July 24, 1957.

By direction of the Board

OGDEN W. FIELDS,
Acting Executive Secretary.

Exhibit A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FOURTEENTH REGION

Case No. 14-CB-291

In the Matter of

NATIONAL ORGANIZATION MASTERS, MATES AND PILOTS OF AMERICA, INC., AFL; and NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, CIO; and NATIONAL MARITIME UNION OF AMERICA, CIO; and RIVERS JOINT ORGANIZING COMMITTEE; and their Agent GORDON C. KNAPP

and

J. W. BANTA TOWING COMPANY, INC. and PLAQUEMINE TOWING CORPORATION

NOTICE OF MOTION

Sirs:

PLEASE TAKE NOTICE THAT upon the affidavit of Herbert L. Daggett, sworn to on the 23rd day of May, 1957, and upon all the pleadings heretofore filed herein, respondent National Marine Engineers Beneficial Association, AFL-CIO, charged herein as the National Marine Engineers Beneficial Association, CIO, moves the Board for leave to amend its answer, and to reopen the record and receive evidence upon the issues raised by the amended answer,

and for such other and further relief as may seem proper to the National Labor Relations Board

Yours, etc.,

LEE PRESSMAN
Office & P. O. Address
225 Broadway
New York 7, N. Y.
Attorney for Respondent,
National Marine Engineers
Beneficial Association, AFL-CIO

To:

HENRY L. JALETTE, Esq.
for the General Counsel
National Labor Relations Board
Washington 25, D. C.

W. MUNRO ROBERTS, JR., Esq.
1118 Arcade Building
St. Louis, Missouri
For the Charging Party

WILLIAM J. COSTELLO, Esq.
418 Olive Street
St. Louis, Missouri
For the Respondents

Exhibit A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FOURTEENTH REGION

Case No. 14-CB-291

In the Matter of

NATIONAL ORGANIZATION MASTERS, MATES AND PILOTS OF AMERICA, INC., AFL; and NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, CIO; and NATIONAL MARITIME UNION OF AMERICA, CIO; and RIVERS JOINT ORGANIZING COMMITTEE; and their Agent GORDON C. KNAPP

and

J. W. BANTA TOWING COMPANY, INC. and PLAQUEMINE TOWING CORPORATION

AFFIDAVIT OF HERBERT L. DAGGETT

STATE OF LOUISIANA
PARISH OF ORLEANS
CITY OF NEW ORLEANS } ss.:

HERBERT L. DAGGETT, being duly sworn, deposes and says:

I am the National President of the National Marine Engineers Beneficial Association, AFL-CIO, charged herein as the National Marine Engineers Beneficial Association, CIO, hereinafter called the MEBA.

Exhibit A

This affidavit is being submitted in support of the motion to amend paragraph 5 of the respondent's answer and to reopen the record and receive evidence upon the issues raised by the amended answer.

In this proceeding, charges were filed December 28, 1954. A complaint was issued July 6, 1955, naming the MEBA as one of the respondents. It alleged in paragraph IV that the MEBA was a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended (herein called the Act).

One attorney represented all the respondents and filed a single joint answer for all the respondents.

One of the allegations of the complaint which was admitted by the answer was that the respondent MEBA was a labor organization within the meaning of Section 2(5) of the Act. The attorney for the respondents was not authorized by MEBA to make such an admission with respect to it. MEBA does not admit that it is a labor organization within the meaning of the Act, and it is not in fact a labor organization within the meaning of the Act.

In recent proceedings initiated by the General Counsel of the National Labor Relations Board against MEBA, arising out of MEBA's picketing of ships of American Coal Shipping, Inc., the issue has arisen as to whether MEBA is in fact a labor organization within the meaning of Section 2(5) of the Act. In all of these proceedings the MEBA has denied that it is such a labor organization. However, in each instance, the General Counsel of the National Labor Relations Board has introduced in each such proceeding the pleadings in this case as evidence to establish that the MEBA is such a labor organization. In spite of the fact that in each such proceeding the MEBA has denied that it is such a labor organization, nevertheless the Courts have held that the aforesaid evidence constitutes

Exhibit A

reasonable grounds to believe that MEBA is a labor organization within the meaning of Section 2(5) of the Act. In one such case, the Court commented on the fact that the admission in this instant proceeding has been permitted to stand without any attempted correction.

The significance which has thus been drawn by this unauthorized admission in these current proceedings makes it necessary for the MEBA to make this motion.

WHEREFORE, it is respectfully submitted that this motion be granted, and the respondent MEBA be permitted to file an amended answer changing paragraph 5 to the following:

> "Respondent denies the allegations contained and set forth in paragraph IV."

And respondent prays for such other and further relief as to the Board may seem proper.

HERBERT L. DAGGETT.

(Sworn to May 23, 1957.)

Supplemental Affidavit of Charles T. Atkins

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

(Record, pp. 39-40)

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

CHARLES T. ATKINS, being duly sworn, deposes and says:

I am International President of the International Organization of Masters, Mates & Pilots and submit this supplemental affidavit in opposition to plaintiff's motion for a temporary injunction and in support of defendant's cross-motion to dismiss the complaint.

Supplemental Affidavit of Charles T. Atkins

Deponent has been a member of the Organization for many years and has sailed as a licensed deck officer in all positions, including master. I am fully familiar with the work done by deck officers and members of the Organization.

All members of the Organization perform work in which they have authority in the interests of their employers, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct them, or to adjust their grievances, or effectively to recommend such action. The exercise of such authority is not merely of a routine or clerical nature, and requires the use of independent judgment. Members who are unlicensed perform the same type of work as those who are licensed and have the same authority.

I have examined the records maintained by Local No. 2 of the International Organization of Masters, Mates & Pilots and I can state that many of the members reside and are domiciled in the State of Delaware.

WHEREFORE, it is prayed that the motion for a temporary injunction be denied and the cross-motion to dismiss the complaint be granted.

CHARLES T. ATKINS.

(Sworn to on October 11, 1957.)

Affidavit of George C. Kinney

(Record, pp. 41-42)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

GEORGE C. KINNEY, being duly sworn, deposes and says:

I am employed with the firm of Donovan Leisure Newton & Irvine, attorneys for the plaintiff herein.

On Thursday, October 10, 1957 at 9:30 o'clock in the forenoon I telephoned the Chief Clerk of the Department of State, Division of Corporations, 164 State Street, Albany, New York, inquired as to the nature of any papers on file in that office for International Organization of Masters, Mates and Pilots, Inc., and was told that the following information is on file:

> International Organization of Masters, Mates and Pilots, Inc. is a domestic corporation which lists New York County as its address (no street address given).
>
> It assumed its present name on August 13, 1954, when a Certificate of Change of Name was filed by Weil, Glenn & Thatcher, Attorneys for the Union, 736 Bowen Building, Washington, D. C.

The original Certificate of Incorporation was filed on April 3, 1891 for Grand Harbor of the American Brother-

hood of Steam-Boat Pilots of the United States. On November 26, 1894 a Certificate was filed changing the name to American Association of Masters and Pilots of Steam Vessels. On July 8, 1905 a Certificate was filed changing the name to American Association of Masters, Mates and Pilots. On February 20, 1920 a Certificate was filed changing the name to National Organization, Masters, Mates and Pilots of America, Inc. On August 13, 1954 a Certificate was filed changing the name to International Organization of Masters, Mates and Pilots, Inc., which is the present name of the corporation.

GEORGE C. KINNEY.

(Sworn to on October 11, 1957.)

Opinion of Bruchhausen, *J.*

(Record, pp. 114-124)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civil No. 18060

October 17, 1957

[SAME TITLE]

Appearances:

SATTERLEE, BROWNE & CHERBONNIER
and
DONOVAN, LEISURE, NEWTON & IRVINE
Attorneys for Plaintiff
James V. Hayes
A. V. Cherbonnier
Theodore S. Hope
Sidney P. Howell, Jr.
Helmut J. F. Furth
Of Counsel

LEE PRESSMAN
Attorney for Defendant,
National Marine Engineers'
Beneficial Association, AFL-CIO

MARVIN SCHWARTZ
Attorney for Defendant,
International Organization of Masters, Mates and
Pilots, Inc., AFL-CIO

BETTY M. OLCHIN
Of Counsel

Opinion of Bruchhausen, J.

BRUCHHAUSEN, *D. J.*:

The plaintiff, an operator of ships engaged in cargo transportation, instituted this action against the defendants for specific performance of collective bargaining agreements, made between the plaintiff and each of the defendants. The subject motion is for provisional remedies, enforcing the agreements, pendente lite.

The defendant, National Marine Engineers' Beneficial Association, AFL-CIO is hereinafter called "MEBA."

The defendant, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO is hereinafter called "MMP."

The plaintiff and the defendant, MEBA, as representative of the licensed engineering officers, employed aboard the plaintiff's vessels, entered into a collective bargaining agreement, bearing date June 18, 1955, which by its terms does not expire until June 15, 1958. The agreement provided that "there shall be no strikes, lockouts or stoppages of work during the period of this agreement," also grievance procedure, for the arbitration of all disputes, relating to its interpretation or performance. It also obligated the defendant MEBA to furnish plaintiff on call, and as the plaintiff might from time to time, require, competent and fit licensed officers to serve aboard plaintiff's vessels.

The plaintiff and the defendant, MMP, as the representative of Licensed Deck Officers, other than the Masters of vessels, entered into a similar agreement, bearing date July 1, 1955, expiring on September 30, 1958, which agreement contained an additional provision, viz.:

> "It is understood that in the event a picket line is established against any vessel, the Licensed Deck Officers of such vessel will report and perform all of their normal duties incidental to the security of the vessel, passengers and cargo, provided that no Li-

censed Deck Officer shall be required to work under conditions which may endanger his health or safety. The Organization undertakes to use its best efforts to obtain clearance for such purpose from the Union establishing the picket line."

On or about August 19, 1957 each defendant called a strike against the plaintiff. The strikes have been on ever since.

Prior to the aforesaid work stoppages, negotiations were had, pursuant to wage reopening clauses contained in the agreements. The parties came to no agreement thereon. The plaintiff contends that no dispute then existed between the parties, excepting that the defendants claimed that their members, employed by the plaintiff, had a feeling of insecurity because of fears that the plaintiff's parent corporation, American Coal Shipping, Inc., whose officers were not and are not represented by the defendants, might take over plaintiff's operations, also that the defendants declined to arbitrate the matter. Significantly, MEBA admits that, besides demanding a 6% wage increase, it requested an additional amount for its engineer members "sufficient to compensate them for a possible complete loss of their jobs through the transfer of their vessels to American Coal" (Exhibit E, attached to affidavit of Herbert L. Daggett, sworn to October 9, 1957). MMP makes a similar admission (affidavit of Charles T. Atkins, October 8, 1957, at page 4). It appears that the plaintiff acquiesced in the 6% wage increase, which had previously been generally adopted in the dry cargo shipping industry.

In neither agreement is the no-strike clause qualified by the wage reopening clause. The defendants, by the terms of the agreements, were not entitled to strike by reason of the collapse of the wage negotiations, whatever the cause.

The work stoppages have caused and are causing serious loss, damage and irreparable injury to the plaintiff for which it has no legal remedy.

As to the Defendants' Claim That the Court Has No Jurisdiction of the Action

The plaintiff, in its complaint, alleged as the basis for jurisdiction the diversity of citizenship of the parties and Section 301 of the National Labor Management Act, 1947 (29 U. S. C. A. 185).

There is complete diversity between the plaintiff, a Delaware corporation, and the defendant, MMP, a New York corporation. This cause of action is separate and apart from the plaintiff's case against the defendant MEBA.

There is some doubt as to whether diversity exists in the action between the plaintiff and MEBA, in that there is evidence that some of the members of MEBA reside in the State of Delaware, the same State wherein the plaintiff was and is incorporated.

This leads to a consideration of the second alleged ground of jurisdiction, the aforesaid Section 301 of the National Labor Management Act, 1947, which vests District Courts with jurisdiction of "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act * * * without respect to the amount in controversy or without regard to the citizenship of the parties."

The defendant, MEBA, contends that it is not "a labor organization" and the individuals it represents are not "employees," as those terms are defined in the Act, but that they are "supervisors." Section 2(3) of the Act provides that supervisors shall not be deemed employees. Supervisory personnel are in the category of management and, therefore, were and are not within the scope and purpose of the statute.

The plaintiff claims that in various prior proceedings the defendant MEBA made admissions that it was "a labor organization," while, on the other hand, the said defendant

challenges those statements or their effect and alleges that the individuals are "supervisors," within the meaning of the Act. As to the present application, it is not necessary to adjudicate these issues, other than to find, as this Court does find that the plaintiff presents a substantial Federal question and that this Court can decide the matter only after it has assumed jurisdiction over the controversy. The complaint herein alleges the violation of a single right, the right to have its agreement performed and a single claim for relief. Under these circumstances, the Court assumes jurisdiction of the action. *Strachman* v. *Palmer*, 177 F. 2d 427; *Hurn* v. *Oursler*, 289 U. S. 238 and *Brown* v. *Haldale Estates, Inc.*, 151 F. Supp. 118.

The defendants further contend, that even if this Court should have jurisdiction of the action by reason of diversity or otherwise, such jurisdiction is controlled or limited by the Norris-LaGuardia Act of 1932 (29 U. S. C. 101 et sequa), particularly Section 104 thereof, which provides, in substance, that a Federal Court may not issue an injunction in a "labor dispute."

At the time of enactment of that law, the country was in the grip of a severe economic depression and collective bargaining was practically non-existent. The legislative policy, proclaimed in Section 102, emphasizing that workers should be unhampered in their efforts to organize, stated that "the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment." To the same effect is the statement in the recent case of *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, viz.:

> "The Norris-LaGuardia Act * * * was designed primarily to protect working men in the exercise of organized, economic power which is vital to collective bargaining."

Clearly, the purpose of the statute was to force employers to bargain collectively with their employees.

Likewise, it is plain that the Congress intended that "Supervisors" should not be governed by that Act, or by any other national or local law in that in Section 14(a) (29 U. S. C. 164(a)) of the National Labor Management Act, 1947, it is stated that "no employer * * * shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

The intent of Congress that supervisory personnel should be regarded as part of the management for the purpose of collective bargaining is disclosed in the report of the House Committee on Education and Labor, H. R. Report No. 345, 80th Congress, First Session, 1947. See also *National Labor Relations Board* v. *Edward G. Budd Manufacturing Co.*, 169 F. 2d 571, 578 and *L. A. Young Spring & Wire Corp.* v. *National Labor Relations Board*, 163 F. 2d 905, 906.

A dispute between an employer and a supervisory union over the terms of employment of its members, therefore, is no more a "labor dispute" than a disagreement between officers of a corporate entity or any other group of employers. See *260 Madison Avenue Corp.* v. *Nelson*, 284 App. Div. 254.

It follows that the Norris-LaGuardia Act does not affect or bar the plaintiff herein.

In the absence of statutory restriction, such as set forth in that Act, a Federal Court has the power to enjoin. *Gomez* v. *United Office and Professional Workers*, 73 F. Supp. 679, 683.

Furthermore, where New York law is applicable, it should be followed by a Federal Court. *Guaranty Trust Co.* v. *York*, 326 U. S. 99. The New York Courts have granted injunctions in cases of violations of no-strike clauses. *Stewart Stamping Corp.* v. *Uprichard*, 133 N. Y. S.

2d 579, order affirmed 284 App. Div. 902; *Bee Line* v. *Long Island Local 252, Etc.*, 157 N. Y. S. 2d 232 and *Schlessinger* v. *Quinto*, 117 Misc. 735, affirmed in 201 App. Div. 487.

In the said *Schlessinger* case in the lower court, Mr. Justice Wagner, later a member of the United States Senate, said:

> "It is elementary, and yet sometimes requires emphasis, that the door of a court of equity is open to employer and employee alike. It is no respecter of persons—it is keen to protect the legal rights of all."

The Appellate Court in sustaining the injunction decree granted by Mr. Justice Wagner, pointed out that the officials of a labor union are obligated to exercise their powers of requiring performance of the contract by the Union members. The Court, on this point, said:

> "Two organizations, one composed of employers and the other of employees, have entered into an agreement. Each had power through the consent of its members to enter into a binding obligation in their behalf. By the constitution or by-laws of each, power is given to the organization to enforce, through disciplinary proceedings which have been demonstrated to be effective, compliance with the terms and conditions to which it has subscribed. This contract has mutual obligations binding on the parties thereto. Each party knows the obligation that it has assumed and the consequences of failure or refusal to perform those requirements. Through its control of its members it can compel performance. Under such circumstances, a decree of a court of equity can be enforced against either party and in favor of the other. Grassi Contracting Co. v. Bennett, 174 App. Div. 244, 248, 160 N. Y. Supp. 279. An organization,

having such power to require performance by individual members, can through its officers be compelled to exercise that power. There is in this contract a mutuality of obligation, and there is also a mutuality of remedy for its enforcement."

While in the recent case of *Textile Workers of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448 (decided June 3, 1957), the plaintiff therein, a labor union, invoked the Court to act, pursuant to Section 301 of the 1947 Act, and to order the defendant, the employer, to submit to arbitration, as provided by the terms of the collective bargaining agreement, entered into between the parties, it has an important bearing upon the instant controversy. It also contained a no-strike clause, similar to the one in the case at bar. The Court, in its opinion, in the said case quoted from the Senate and House Reports, which preceded the enactment of the statute. It appears in both reports that the primary concern was that unions and employers should both be bound to collective bargaining contracts and be governed by "the usual processes of the law."

The intent and purpose of the legislation, reported by the Senate, quoted in the said opinion, in substance, is as follows:

1. That the chief advantage which an employer can reasonably expect from a collective labor agreement is the assurance of uninterrupted operation during the term of the agreement.

2. That without some effective method of assuring freedom from economic warfare for the term of the agreement there is little reason why an employer would desire to sign such a contract.

3. That to encourage the making of agreements and to promote industrial peace through faithful performance

by the parties, collective agreements affecting interstate commerce should be enforceable in the federal courts.

It will be noted that the Senate Committee, so reporting, did not limit faithful performance to any particular breach or to any particular party, committing the breach. It clearly meant to insure faithful performance of the entire agreement to the end that there should be industrial peace. There could be no such assurance if either party, at will, might breach the contract by refusal to perform, and there be no adequate enforcement procedure.

The facts and the law warrant the remedy of specific performance, which embraces affirmative as well as negative acts. *Kulukundis Shipping Co.* v. *Amtorg Trading Corp.*, 2 Cir., 126 F. 2d 978.

The plaintiff's motion is granted. The defendants' cross motions are denied. Settle order on two days' notice at which time the parties may submit their proposals as to security and preference of the trial.

WALTER BRUCHHAUSEN
U. S. D. J.

Order Granting Preliminary Injunction

(Record, pp. 125-128)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civil No. 18060

[SAME TITLE]

Plaintiff having moved herein for an order pendente lite enjoining defendants, National Marine Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, and said defendants having cross moved herein and these causes having come before the Court on October 9, 1957, and the Court having heard argument by James V. Hayes, Esq., counsel for plaintiff, and Lee Pressman, Esq. and Marvin Schwartz, Esq., counsel for the respective defendants, and having received and considered the affidavits and briefs filed on behalf of the respective parties, and, after due deliberation, it appearing that the Court has jurisdiction of this action, that there are presently in existence and full effect collective bargaining agreements between plaintiff and each of the defendants, which agreements, by their terms, have not expired, and that defendants have violated and are presently violating the "no-strike" clauses and other provisions of said collective bargaining agreements, and it further appearing that, if defendants not be restrained preliminarily, plaintiff will suffer irreparable injury for which it has no adequate legal remedy, and the Court having, on October 17, 1957, filed its opinion herein, and plaintiff having filed, and the Court having approved, the undertaking as prescribed by Rule 65(c) of the Federal Rules of Civil Procedure, it is therefore,

ORDERED that, effective October 21, 1957 at 5:00 P. M. Eastern Daylight Saving Time, defendants National Marine

Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, their officers, agents, members, servants, employees, attorneys, and all persons in active concert or participation with them who shall or may receive actual notice of this Order, be and the same hereby are enjoined and restrained, during the pendency of this action, from picketing, striking or inciting, causing, inducing, or, in any manner, directly or indirectly, supporting any work stoppage aboard any of the vessels owned or operated by plaintiff, A. H. Bull Steamship Co., or any of its subsidiaries, wherever any such vessels may be situate or, during the pendency of this action, may call; and it is

FURTHER ORDERED that each of said defendants specifically perform its respective agreement to furnish the plaintiff with capable, competent and physically fit licensed engineering or deck officers when and where they are required and of the ratings needed to fill vacancies necessitating the employment of such Licensed Personnel in ample time to prevent any delay in the scheduled departure of any vessel covered by said agreements; and it is

FURTHER ORDERED that each of said defendants shall, so long as this Order remains in effect, promptly clear, validate or otherwise certify for employment aboard plaintiff's said vessels such qualified licensed officers who are members of the defendants' Unions as plaintiff may, from time to time, require; and it is

FURTHER ORDERED that defendants' cross motions be and the same are hereby, in all respects, denied; and it is

FURTHER ORDERED that the Court's opinion filed herein on October 17, 1957, shall constitute the findings of fact and conclusions of law as required by Rule 52(a) of the Rules of Civil Procedure.

Dated: Brooklyn, New York, October 21, 1957.

s/ WALTER BRUCHHAUSEN
United States District Judge

Counter-Order Submitted by National Marine Engineers' Beneficial Association, AFL-CIO

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff having moved herein for a preliminary injunction, and defendant, National Marine Engineers' Beneficial Association, AFL-CIO having cross-moved herein, and the Court having considered the complaint herein, and the affidavits submitted in support of the motion for preliminary injunction, and the several affidavits together with the exhibits annexed thereto submitted in opposition to said motion, and in support of the said cross-motion, and after hearing argument by James V. Hayes, Esq., counsel for plaintiff, and Lee Pressman, Esq. and Marvin Schwartz, Esq., counsel for the respective defendants, and the Court having received and considered the briefs of counsel, and after due deliberation, the court having filed its opinion herein on October 17, 1957, and the plaintiff having filed and the Court having approved the undertaking prescribed by Rule 65(c) of the Federal Rules of Civil Procedure, it is therefore

ORDERED, that effective October 22 at o'clock Eastern Daylight Saving Time, defendant, National Marine Engineers' Beneficial Association, AFL-CIO, its officers, agents, servants, employees, attorneys and those persons in active concert or participating with them who received actual

Counter-Order Submitted by National Marine Engineers' Beneficial Association, AFL-CIO

notice of this order, be and the same hereby are restrained, during the pendency of this action, from picketing, striking or otherwise causing any work stoppage aboard any of the vessels owned or operated by plaintiff wherever such vessels may be, and it is

FURTHER ORDERED, that the defendant's cross-motion be and the same hereby is in all respects denied.

Dated, Brooklyn, New York,
October , 1957.

Enter,

U. S. D. J.

Counter-Order Submitted by International Organization of Masters, Mates and Pilots, Inc. AFL-CIO

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff having moved herein for an order pendente lite enjoining defendants, National Marine Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, and said defendants having cross moved herein and these causes having come before the Court on October 9, 1957, and the Court having heard argument by James V. Hayes, Esq., counsel for plaintiff, and Lee Pressman, Esq. and Marvin Schwartz, Esq., counsel for the respective defendants, and having received and considered the affidavits and briefs filed on behalf of the respective parties, and, after due deliberation, it appearing that the Court has jurisdiction of this action, that there are presently in existence and full effect collective bargaining agreements between plaintiff and each of the defendants, which agreements, by their terms, have not expired, and that defendants have violated and are presently violating the "no-strike" clauses of said collective bargaining agreements, and it further appearing that, if defendants not be restrained preliminarily, plaintiff will suffer irreparable injury for which it has no adequate legal remedy, and the Court having, on October 17, 1957, filed its

Counter-Order Submitted by International Organization of Masters, Mates and Pilots, Inc. AFL-CIO

opinion herein, and upon the filing by plaintiff and the approval by the Court of the undertaking as prescribed by Rule 65(c) of the Federal Rules of Civil Procedure, it is, therefore,

ORDERED that defendants National Marine Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, their officers, agents, members, servants, employees, attorneys and all persons in active concert or participation with them who shall or may receive actual notice of this Order, be and the same hereby are enjoined and restrained, during the pendency of this action, from picketing, striking or inciting, causing, inducing, or, in any manner, directly or indirectly, supporting any work stoppage aboard any of the vessels owned or operated by plaintiff, A. H. Bull Steamship Co., or any of its subsidiaries, wherever any such vessels may be situate or, during the pendency of this action, may call; and it is

FURTHER ORDERED that enforcement of this Order be stayed pending appeal by the defendants; and it is

FURTHER ORDERED that defendants' cross motions be and the same are hereby, in all respects, denied; and it is

FURTHER ORDERED that the Court's opinion filed herein on October 17, 1957, shall constitute the findings of fact and conclusions of law as required by Rule 52(a) of the Rules of Civil Procedure.

Dated: Brooklyn, New York, October , 1957.

Enter

Notice of Appeal

(Record, p. 131)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE that the defendants, National Marine Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, hereby appeal from the order herein dated October 21, 1957, granting a temporary injunction, and from each and every part thereof, and from the opinion of the court herein dated October 17, 1957, upon which the aforesaid order was based, and each and every part thereof.

Dated, New York, New York,
October 21, 1957.

Notice of Appeal

Yours, etc.,

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